

SETTLEMENT AGREEMENT

1. **INTRODUCTION**

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Lucky Bums, Inc. and Lucky Bums Subsidiary, LLC (collectively, “Lucky Bums”). Together, Espinoza and Lucky Bums are collectively referred to as the “Parties.” Espinoza is an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Espinoza alleges that Lucky Bums is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Espinoza alleges that Lucky Bums has exposed individuals to the chemical Bisphenol A (BPA) from its sales of Lucky Bums helmets without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are Lucky Bums helmets (the “Products”) manufactured in 2020 or before that have been or in the future may be offered for sale and/or sold in California by Lucky Bums.

1.4 Notice of Violation. On February 16, 2021, Espinoza served Lucky Bums, Sierra Trading Post, Inc., and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Lucky Bums and such others, including public enforcers, with notice that alleged that Lucky Bums was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Lucky Bums denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold

and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Lucky Bums of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Lucky Bums of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lucky Bums. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Lucky Bums maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.


1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.


2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, if required by Proposition 65, Products that Lucky Bums directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Products.

2.2 Reformulation Standard. “Reformulated Products” shall mean any Products intended for retail sale in California that contains BPA on any component to which consumers are *not* exposed to in excess of 3 micrograms per day of dermal exposure from solid materials.

2.3 Clear and Reasonable Warning. As of the Effective Date and if required by Proposition 65, Lucky Bums agrees to manufacture, import, or purchase for sale in California only (a) Reformulated Products pursuant to § 2.2, or (b) Products that are accompanied by either of the following warnings.

- (a)  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

(b)  **WARNING:** This product can expose you to chemicals including Bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed text may, but is not required to be used. Lucky Bums and its downstream retailers shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date. For purposes of this Settlement Agreement, a “Reformulated Products” are Products that meet the standard set forth in Section 2.2, above.

2.4 Compliance with Warning Regulations. The warning provided pursuant to § 2.3 above shall be affixed to or printed on the Products’ packaging or labeling. The warning shall be prominently affixed to or printed on the packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Lucky Bums shall pay \$500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Espinoza. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Lucky Bums shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Within fifteen (15) days of the Effective Date, Lucky Bums shall issue three (3) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$375.00; and to (b) “Brodsky Smith in Trust for Espinoza” in the amount of \$125.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Espinoza, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (Memo Line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHHA.** Lucky Bums agrees to provide Espinoza’s counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) **Tax Documentation.** Lucky Bums agrees to provide a completed IRS 1099 for its payments to, and Espinoza agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Gabriel Espinoza” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Espinoza and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to her. The Parties thereafter reached an accord on the compensation due to Espinoza and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Lucky Bums shall reimburse Espinoza’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Lucky Bums’ attention, and negotiating a settlement in the public interest. Within fifteen (15) days of the Effective Date, Lucky Bums shall issue five (5) checks payable to “Brodsky Smith” in the following amounts: (1) Check payable on February 15, 2022 in the amount of \$2,000.00; (1) Check payable on May 15, 2022 in the amount of \$2,500.00; (1) Check payable on August 15, 2022 in the amount of \$2,500.00; (1) Check payable on November 15, 2022 in the amount of \$3,750.00; and (1) Check payable on January 15, 2023 in the amount of \$3,750.00 for a total of \$14,500.00. The checks shall be delivered to the address identified in § 3.2(a)(i), above and shall not be cashed or negotiated until the date appearing on the checks.

5. RELEASE OF ALL CLAIMS

5.1 Release of Lucky Bums and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Lucky Bums, of any violation of Proposition 65 that was, could have been or may be asserted by

Espinoza or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) for failure to provide warnings for alleged exposures to BPA from use of the Products, and Releasors hereby release any such claims against Lucky Bums and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Lucky Bums directly or indirectly distributes or sells the Products, including but not limited to Sierra Trading Post, Inc., its parents, subsidiaries, and affiliates, downstream distributors, wholesalers, customers, retailers, respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 for the Products that could have been alleged in the Notice.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical BPA from use of the Products.

5.2 Lucky Bums’ Release of Espinoza. Lucky Bums, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinoza and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered.

Espinoza, on behalf of himself only, on one hand, and Lucky Bums, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Lucky Bums each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Lucky Bums with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

5.5. Public Benefit. It is Lucky Bums' understanding that the commitments it has agreed to herein, and actions to be taken by Lucky Bums under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Lucky Bums that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Lucky Bums failure to provide a warning concerning exposure to BPA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Lucky Bums is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable

provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Lucky Bums shall provide written notice to Espinoza of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Lucky Bums:

Michael D. Pogue
Gravis Law, PLLC
460 Sun Valley Rd Suite 207
Sun Valley, ID 83353

For Espinoza:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Espinoza agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: 2/28/22

By: _____

Gabriel Espinoza

By:  _____

Lucky Bums, Inc.

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The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

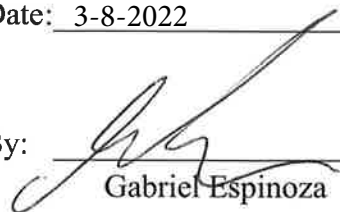
AGREED TO:

AGREED TO:

Date: 3-8-2022 _____

Date: _____

By: _____


Gabriel Espinoza

By: _____

Lucky Bums, Inc.