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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 IMPLUS FOOTCARE, LLC .

15 Defendant.  
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Case No.: CGC-22-600237

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer, Jr.

Dept.: 302

Hearing Date: August 10, 2022

Hearing Time: 9:30 AM

Reservation #:

1           **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel  
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Implus Footcare, LLC  
4 (“Implus” or “Defendant”) with Espinoza and Implus collectively referred to as the “Parties” and  
5 each of them as a “Party.” Espinoza is an individual residing in California that seeks to promote  
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
7 hazardous substances contained in consumer products. Implus is alleged to be a person in the course  
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9           **1.2 Allegations and Representations.** Espinoza alleges that Implus has exposed  
10 individuals to chromium (hexavalent compounds) (“chromium VI” or “(CrVI)”) from its sales of  
11 gloves with leather components including, but not limited to, Harbinger Flexfit Strength Gloves  
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. CrVI is  
13 listed under Proposition 65 as a chemical known to the State of California to cause cancer and  
14 adverse developmental effects in both males and females.

15           **1.3 Notice of Violation/Complaint.** On or about June 16, 2021 Espinoza served  
16 Implus, and various public enforcement agencies with documents entitled “60-Day Notice of  
17 Violation” pursuant to Health & Safety Code §25249.7(d), alleging that Implus violated Proposition  
18 65 for failing to warn consumers and customers that use of Harbinger Flexfit Strength Glove expose  
19 users in California to CrVI (the “Notice”). No public enforcer has brought and is diligently  
20 prosecuting the claims alleged in the Notice. On June 16, 2022, Espinoza filed a complaint (the  
21 “Complaint”) in the matter.

22           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Implus as to the allegations contained in the Notices/Action filed in this matter,  
24 that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
26 of all claims which were, or could have been raised in the Action based on the facts alleged therein  
27 and/or in the Notices.  
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1           1.5       Implus denies the material allegations contained in the Notices and Action and  
2 maintain that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
3 construed as an admission by Implus of any fact, finding, issue of law, or violation of law; nor shall  
4 compliance with this Consent Judgment constitute or be construed as an admission by Implus of  
5 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
6 Implus. However, this Section shall not diminish or otherwise affect the obligations,  
7 responsibilities, and duties of Implus under this Consent Judgment.

8       **2.       DEFINITIONS**


9           2.1       **Covered Products.** The term “Covered Products” means gloves with leather  
10 components including, but not limited to, Harbinger Flexfit Strength Gloves that are manufactured,  
11 distributed and/or offered for sale in California by Implus.

12           2.2       **Effective Date.** The term “Effective Date” means the date counsel for Implus  
13 receives notice that this Consent Judgment is entered as a Judgment of the Court.

14       **3.       INJUNCTIVE RELIEF: WARNINGS**

15           3.1       **Clear and Reasonable Warning.** Within sixty (60) days of the Effective Date, and  
16 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2  
17 must be provided for all Covered Products that Implus manufacturers, imports, distributes, sells, or  
18 offers for sale in California. There shall be no obligation for Implus to provide a warning for  
19 Covered Products that enter the stream of commerce prior to the Effective Date, or within 60 days  
20 after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning**  
21 described in §§ 3.1(a) or (b), respectively:

22           (a)       **Warning.** The “Warning” shall consist of the statement:

23            **WARNING:** This product can expose you to chemicals including chromium  
24 (hexavalent compounds), which is known to the State of California to cause cancer  
25 and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26           (b)       **Alternative Warning:** Implus may, but is not required to, use the alternative short-  
27 form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

28            **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1           3.2     A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word  
2     “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
3     the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
4     triangle with a black outline, except that if the sign or label for the Covered Products do not use the  
5     color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than  
6     the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Covered  
7     Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic  
8     process, providing that the warning is displayed with such conspicuousness, as compared with other  
9     words, statements, or designs as to render it likely to be read and understood by an ordinary  
10    individual under customary conditions of purchase or use. A warning may be contained in the same  
11    section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,  
12    concerning the use of the Covered Products and shall be at least the same size as those other safety  
13    warnings.

14           If Implus sells Covered Products via an internet website to customers located in California,  
15    the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
16    (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
17    same page as the price for the Covered Products; (c) on one or more web pages displayed to a  
18    purchaser prior to purchase during the checkout process, or (d) by use of the word **WARNING**  
19    with a hyperlink to a warning under section 2.1(a) or (b) pursuant to California Code of Regulations  
20    title 27 section 25602(b). Alternatively, a symbol consisting of a black exclamation point in a  
21    yellow or white equilateral triangle may appear adjacent to or immediately following the display,  
22    description, price, or checkout listing of the Covered Products, if the warning statement appears  
23    elsewhere on the same web page in a manner that clearly associates it with the product(s) to which  
24    the warning applies.

25           3.3     **Compliance with Warning Regulations.** Implus shall be deemed to be in  
26    compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent  
27    Judgment or by complying with warning regulations approved or adopted by the State of  
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California's Office of Environmental Health Hazard Assessment ("OEHHA"), or by any other State of California agency authorized to issue regulations approving or adopting warnings as implementation of Proposition 65, or by statutes adopted by the California State Legislature or by the California voters after the Effective Date.

#### **4. MONETARY TERMS**

**4.1 Civil Penalty.** Implus shall pay \$3,000.00 as a Civil Penalty pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

**4.1.1** Within thirty (30) days of the Effective Date, Implus shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$2,250.00; and to (b) "Brodsky Smith in Trust for Espinoza" in the amount of \$750.00. Payment owed to Espinoza pursuant to this Section shall be delivered to the following payment address:

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

Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

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

1 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth  
2 above as proof of payment to OEHHA.

3 4.2 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Implus shall pay  
4 \$32,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Espinoza's  
5 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Implus'  
6 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
7 interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza  
10 acting on his own behalf, and on behalf of the public interest, and Implus, and its parents, sister  
11 companies, affiliates, shareholders, members, directors, officers, managers, employees,  
12 representatives, agents, attorneys, divisions, subdivisions, and their predecessors, successors and  
13 assigns ("Defendant Releasees"), and all entities from whom they directly or indirectly obtain  
14 ("Upstream Releasees") and to whom they directly or indirectly distribute or sell Covered Products,  
15 including but not limited to manufacturers, suppliers, distributors, wholesalers, customers,  
16 licensors, licensees, retailers including but not limited to Golf Galaxy, LLC, Pro Performance, LLC,  
17 American Sports Licensing, Inc., American Sports Licensing, LLC, Dick's Sporting Goods, Inc.,  
18 and each of their parents, sister companies, affiliates, shareholders, members, directors, officers,  
19 managers, employees, representatives, agents, attorneys, divisions, subdivisions ("Downstream  
20 Releasees"), of all claims for violations of Proposition 65 based on exposure to CrVI from use of  
21 the Covered Products as set forth in the Notice, with respect to any Covered Products manufactured,  
22 distributed, or sold by Implus prior to the Effective Date. Defendant Releasees' compliance with  
23 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to  
24 exposure to CrVI from the Covered Products.

25 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current  
26 agents, representatives, attorneys, and successors and/or assignees, and not in his representative  
27 capacity, hereby releases Defendant Releasees, Upstream Releasees and Downstream Releasees  
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1 from all claims that he has asserted or could have asserted against said Releasees arising out of  
2 Proposition 65. Espinoza acting on behalf of himself, his past and current agents, representatives,  
3 attorneys, and successors and/or assignees, and not in his representative capacity further waives all  
4 rights to institute or participate in, directly or indirectly, any form of legal action and releases  
5 Implus, Defendant Releasees, Upstream Releasees and Downstream Releasees from any and all  
6 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
7 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of  
8 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
9 future, with respect to any alleged violations of Proposition 65 related to or arising from use of the  
10 Covered Products manufactured, distributed, or sold by Implus, Defendant Releasees, Upstream  
11 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
12 paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now has,  
13 or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil  
14 Code, which provides as follows:

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

19 5.3 Implus waives any and all claims against Espinoza, his attorneys and other  
20 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and  
21 other representatives, whether in the course of investigating claims or otherwise seeking  
22 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

## 23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
25 any and all prior negotiations and understandings related hereto shall be deemed to have been  
26 merged within it. No representations or terms of agreement other than those contained herein exist  
27 or have been made by any Party with respect to the other Party or the subject matter hereof.  
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1       **7.       GOVERNING LAW**

2               The terms of this Consent Judgment shall be governed by the laws of the State of California  
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
4 rendered inapplicable by reason of law generally, or as to Covered Products, then Implus shall have  
5 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
6 Covered Products are so affected.

7       **8.       NOTICES**

8               8.1       Unless specified herein, all correspondence and notices required to be provided  
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
10 class, (registered or certified mail) return receipt requested; (ii) electronic mail with proof of  
11 delivery; or (iii) overnight courier on any party by the other party at the following addresses:

12       For Defendant:

13               Jonathan A. Muenkel  
14               NorthStar Law Group  
15               1106 Second Street, #831  
16               Encinitas, CA 92024  
17               Email: jonathan@ns-lg.com

18       And

19       For Espinoza:

20               Evan Smith  
21               Brodsky Smith  
22               9595 Wilshire Blvd., Ste. 900  
23               Beverly Hills, CA 90212  
24               Email: esmith@brodskysmith.com

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

27       **9.       COUNTERPARTS; FACSIMILE SIGNATURES**

28               9.1       This Consent Judgment may be executed in counterparts and by facsimile, each of  
which shall be deemed an original, and all of which, when taken together, shall constitute one and  
the same document.

10.1 Espinoza agrees to comply with the requirements set forth in California Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Implus agrees it shall support approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within thirty (30) days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course on the trial court's calendar.

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

11.2 **Alternative Compliance Standards.** If either (i) Espinoza or another private enforcer enters into a court-approved settlement or a court enters a final judgment in a Proposition 65 enforcement action over exposure to CrVI from leather that includes injunctive relief defining the conditions under which Proposition 65 warnings are required for exposure to CrVI in gloves with leather components, including but not limited to a reformulation standards based on CrVI content or tannery process controls; or (ii) the State of California adopts a standard defining the conditions under which Proposition 65 warnings are required for exposure to CrVI in gloves with leather components, the Parties will meet and confer in good faith on conforming modifications to this Consent Judgment. If the Parties are unable to reach agreement, either Party may move the Court to modify the Consent Judgment.

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**12. ATTORNEY'S FEES**

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

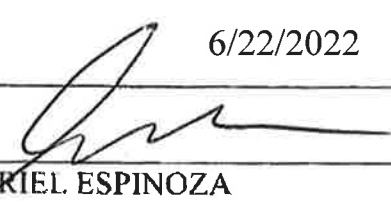
**13. RETENTION OF JURISDICTION**

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

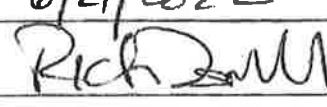
**14. AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

Date: 6/22/2022  
By:   
GABRIEL ESPINOZA

**AGREED TO:**

IMPLUS FOOTCARE, LLC  
Date: 6/21/2022  
By:   
Name: Richard S. Donnell  
Title: General Counsel

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court