

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) on the one hand and Fender Musical Instruments Corporation (“Fender”) on the other. Together, Espinoza and Fender 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 Fender 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 Fender has exposed individuals to chromium (hexavalent compounds) (“CrVI”) from its sales of Fender Suede Fringe Straps without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. CrVI is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer or reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are leather guitar straps, including but not limited to Fender Suede Fringe Straps (“Covered Products”) that have been imported, distributed, offered for sale and/or sold in California by Fender.

1.4 Notice of Violation. On or about June 8, 2022, Espinoza issued to Fender, Sweetwater Sound, LLC dba Sweetwater.com (“Sweetwater”), and various public enforcement agencies a document entitled “60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act Health” (“Notice”). The Notice provided Fender and such others, including public enforcers, with notice that alleged that Fender was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers that use of the Covered Products will expose them to CrVI. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Fender 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 Covered Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Fender 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 Fender of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Fender. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Fender maintains that it has not knowingly manufactured, or caused to be manufactured, the Covered 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

2.1 Clear and Reasonable Warning. As of the ninety (90) days after the Effective Date (the “Compliance Date”), and continuing thereafter, a clear and reasonable exposure warning as set forth in Section 2.1 and 2.2 must be provided for all Covered Products that Fender manufacturers, imports, distributes, sells, or offers for sale in California. There shall be no obligation for Fender to provide an exposure warning for Covered Products that entered the stream of commerce prior to the Compliance Date. For purposes of this Settlement Agreement, “enter the stream of commerce” means that the Product is no longer in the custody of Fender. The warning shall consist of either the **Warning** or **Alternative Warning** described in Sections 2.3(a) or (b), respectively:

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

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

 (b) **Alternative Warnings:** Fender may, but is not required to, use one of the alternative short-form warnings as set forth in this Section 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

OR

⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov. For more information go to www.P65Warnings.ca.gov.

(c) **“Safe Harbor” Warning.** Fender may use any form of “safe harbor” warning set forth in the Proposition 65 regulations that are applicable to the Covered Product and the exposures at issue at the time it places a Covered Product in the stream of commerce.

2.2 The **Warning** or **Alternative Warning** provided pursuant to Section 2.1 must print the word **“WARNING:”** in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word **“WARNING:”** must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word **“WARNING:”**. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Products’ packaging or labeling, provided that the warning is 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. The **Warning** or **Alternative 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 Product and shall be at least the same size as those other safety warnings.

In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites, including Sweetwater’s, where Fender offers Covered Products for sale to consumers in California and the consumer is able to complete the purchase on the website. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word **“WARNING,”** appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase, including within the online product description. To comply with this Section, Fender shall (a) post the **Warning** or **Alternative Warning** on its own website if the website allows for the consumer to complete the purchase on the website,

and, if Fender has the ability to do so, on the websites of its third-party internet sellers where Fender controls the content of the product display page. If Fender knows that Covered Products will be sold on a website that Fender does not control, Fender will provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Covered Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that Fender shall be deemed to be in compliance with this Settlement Agreement by adhering to Section 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Products and the exposure at issue after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Fender shall pay a total of \$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 Section 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Fender 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 ten (10) days of the Effective Date, Fender shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Gabriel Espinoza" in the amount of \$125.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in Section 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 Section 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 OEHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHA (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 OEHHA. Fender agrees to provide Espinoza's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Espinoza, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Fender 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 them. 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, Fender shall reimburse Espinoza’s counsel \$4,500.00 for fees and costs incurred as a result of investigating and bringing this matter to Fender’s attention, and negotiating a settlement in the public interest.

Payment pursuant to this Section is as follows: Within ten (10) days of the Effective Date, Fender shall issue a settlement check in the amount of \$4,500.00 payable to “Brodsky Smith” for delivery to the address identified in Section 3.2(a)(i), above. The payments set forth in Sections 3 and 4, which total \$5,000.00, are the exclusive payments due under this Agreement.

5. RELEASE OF ALL CLAIMS

5.1 Release of Fender and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Fender, of any violation of Proposition 65 that was or could have been 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 CrVI from use of the Covered Products, and Releasors hereby release any such claims against Fender and its parents, subsidiaries, affiliated entities, shareholders, suppliers, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Fender directly or indirectly distributes or sells the Covered Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Sweetwater, and each of their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims under Proposition 65 based on exposure to CrVI in connection with Covered Products manufactured on or before the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 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 she 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 CrVI from use of the Covered Products.

5.2 Fender's Release of Espinoza. Fender, 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 Covered 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 Covered Products will develop or be discovered. Espinoza on behalf of himself only, on one hand, and Fender, 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 Sections 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 Fender each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Public Benefit. It is Fender's understanding that the commitments it has agreed to herein, and actions to be taken by Fender 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 Fender that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Fender's failure to provide a warning concerning exposure to CrVI from the Covered 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 Covered Products addressed in this Settlement Agreement, provided that Fender 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. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Agreement, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. Any party that fails to meet and confer or otherwise attempt in good faith to resolve any dispute arising under this Agreement prior to seeking judicial enforcement, shall forfeit any attorneys' fees and costs to which that Party may otherwise be entitled.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws 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, Fender 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.

9. 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 Fender:

Trenton H. Norris
Hogan Lovells US LLP Four Embarcadero Center, Suite 3500
San Francisco, CA 94111-4024

For Espinoza:

Evan Smith
Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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.

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

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

12. **MODIFICATION**

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

13. **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.

14. **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: August 11, 2023

By: _____
Gabriel Espinoza

By: *Aarash Darroodi*

Fender Musical Instruments Corporation
Aarash Darroodi
EVP & General Counsel

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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: 8 / 23 / 23

Date: _____

By:  _____

By: _____

Gabriel Espinoza

Fender Musical Instruments Corporation