

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Howies Hockey, Inc. (“Howies Hockey”). Together, Espinoza and Howies Hockey 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 Howies Hockey 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 Howies Hockey has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of Howies Hockey Puck Bags without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are Howies Hockey Puck Bags, including but not limited to UPC #610370892374, that have been imported, distributed, offered for sale and/or sold in California by Howies Hockey (the “Products”).

1.4 Notice of Violation. On September 28, 2022, Espinoza served Howies Hockey and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Howies Hockey and such others, including public enforcers, with notice that alleged that Howies Hockey 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 DEHP. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Howies Hockey’s compliance

with Proposition 65. Specifically, Howies Hockey 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, offered for sale, imported, and/or distributed in California, including the Products, have been and are in compliance with Proposition 65 and all other laws. Nothing in this Settlement Agreement shall be construed as an admission by Howies Hockey 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 Howies Hockey of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Howies Hockey. 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, Howies Hockey maintains that it has not knowingly manufactured, or caused to be manufactured, distributed, shipped, imported, or stored 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 Howies Hockey’s Duties. Commencing on the Effective Date, and continuing thereafter, Products that Howies Hockey directly manufactures, imports, distributes, sells, or offers for sale in California shall only be “Compliant Products.” For purposes of this Settlement Agreement, “Compliant Products” are defined as either: (a) Reformulated Products as defined pursuant to § 2.2, below; or (b) those Products labeled with a clear and reasonable exposure warning in compliance with Proposition 65 pursuant to §§ 2.3 and 2.4, below. Products that were manufactured prior to the Effective Date, supplied to third parties by Howies Hockey prior to the Effective Date, or otherwise already in the stream of commerce shall be exempt from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled, even if sold by downstream third parties after the Effective Date. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is 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 Product or Product that entered the stream of commerce prior to the Effective Date.

2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other scientifically reliable methodology utilized by federal or state government agencies for the purpose of determining the DEHP content in a solid substance.

2.3 Clear and Reasonable Warning. Commencing on the Effective Date, and continuing thereafter, and whenever a Proposition 65 warning is required for Products offered for sale in California, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Howies Hockey manufacturers, imports, distributes, sells, or offers for sale in California that are not a Reformulated Product. There shall be no obligation for Howies Hockey to provide an exposure warning for Reformulated Products or for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively, which the Parties agree are in compliance with current Proposition 65 regulations as of the Effective Date:

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

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is 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 Warning:** Howies Hockey may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 2.3 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 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 Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative 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 Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Howies Hockey offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **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. If a warning is provided on the Products using the foregoing **Alternative Warning**, the warning provided on the website may use the same content. To comply with this Section with regard to third-party internet sellers of the Products, Howies Hockey shall comply with the requirements of Title 27, California Code of Regulations, Section 25600.2

2.5 Compliance with Warning Regulations. The Parties agree that Howies Hockey shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with Proposition 65 warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”) applicable to the Products and the exposure at issue after the Effective Date. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Howies Hockey may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. If Proposition 65 warnings for DEHP should

no longer be required after the Effective Date, Howies Hockey shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Howies Hockey 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 Civil Penalty remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to Espinoza.

Civil Penalty.

3.1 Within ten (10) days of the Effective Date, Howies Hockey 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 § 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 OEHHA (EIN: 68-0284486), pursuant to § 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.** Howies Hockey 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 § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Howies Hockey 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, Howies Hockey shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to Howies Hockey's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Howies Hockey shall pay Espinoza's counsel Brodsky & Smith, LLC ("Brodsky

& Smith”) \$7,000.00 for all attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Howies Hockey and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Howies Hockey, 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 DEHP from use of the Products. Releasors hereby release any such claims against (a) Howies Hockey and its owners, parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, members, insurers, attorneys, predecessors, successors and assignees (the “Releasees”), and (b) each entity to whom Howies Hockey directly or indirectly provides, distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, and licensees including, but not limited to, Pure Hockey, Inc. (collectively, the “Downstream Releasees”), and from all claims for violations of Proposition 65, or any other statutory or common law claims, that have been, could have been, or may in the future be asserted against the Releasees and/or Downstream Releasees through the Effective Date based on exposure to, and failure to warn about exposure to, DEHP from use of the Products manufactured, imported, or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that compliance with the terms of this Settlement Agreement by Howies Hockey shall be deemed to be compliance with Proposition 65 with regard to exposure to DEHP from use of the Products.

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 and Downstream 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 DEHP from use of the Products.

5.2 Howies Hockey's Release of Espinoza. Howies Hockey, 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 alleged exposure to DEHP from use of 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 Howies Hockey, 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 §§ 6.1 and 6.2, 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 Howies Hockey 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 Howies Hockey with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

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, then Howies Hockey shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Products are 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 Howies Hockey:

Tiffany R. Hedgpeth
Gabriel J. Padilla
EDGCOMB LAW GROUP, LLP
333 North Glenoaks Blvd., Suite 610
Burbank, CA 91502-1144

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.

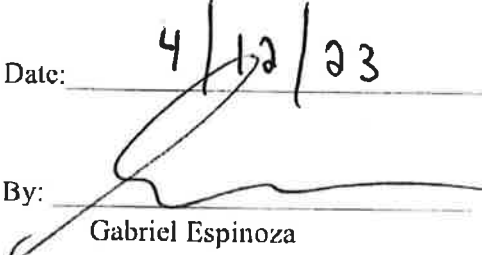
12. ENTIRE AGREEMENT

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 to bind either of the Parties.

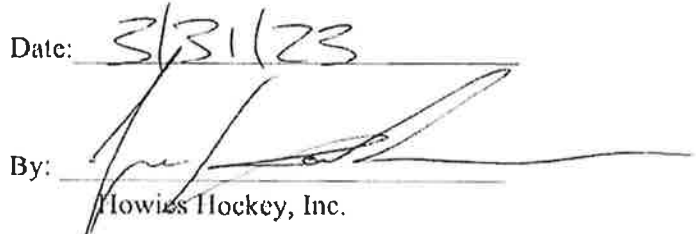
13. AUTHORIZATION

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

AGREED TO:

Date: 4/12/23
By: 
Gabriel Espinoza

AGREED TO:

Date: 3/31/23
By: 
Howies Hockey, Inc.