

RELEASE & SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Release & Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Wilson Sporting Goods Co. (“Wilson”). Together, Espinoza and Wilson 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 Wilson 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 Wilson has exposed individuals to chromium (hexavalent compounds) (“CrVI”) from its sales of DeMarini Digi II batting gloves, UPC # 887768501358 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Wilson denies that its products contain CrVI, and also denies that it has any liability pursuant to Proposition 65 (See Section 1.5 – No Admission of Liability). CrVI 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 DeMarini Digi II batting gloves, UPC # 887768501358 (the “Covered Products”) that have been imported, distributed, offered for sale and/or sold in California by Wilson, its related entities, or any of its retailers and downstream customers as further described in Section 5.1.

1.4 Notice of Violation. On April 28, 2023, Espinoza served Walmart, Inc. and Walmart Apollo, LLC (collectively, “Walmart”), Wilson, 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 Wilson and such others, including public enforcers, with notice that alleged that Wilson 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 CrVI. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission of Liability. Wilson 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. Nothing in this Settlement Agreement shall be construed as an admission by Wilson 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 Wilson of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Wilson. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Wilson maintains that it has not 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. REASONABLE EXPOSURE WARNINGS OF COVERED PRODUCTS


2.1 Reasonable Exposure Warning of Covered Products. Wilson previously discontinued the Covered Products. Should Wilson elect to sell the Covered Products in the future, commencing within sixty (60) days after the Effective Date, and continuing thereafter, Covered Products that Wilson directly manufactures, imports, distributes, sells, or offers for sale in California shall be labeled with a clear and reasonable exposure warning, as set forth below.

2.2 Clear and Reasonable Warning. To the extent Wilson desires to sell the Covered Products in the future, Wilson shall provide a clear and reasonable exposure warning for Covered Products that it manufactures, imports, distributes, sells, or offers for sale in California. There shall be no obligation for Wilson to provide an exposure warning for Covered Products that enter the stream of commerce within the 60 day period immediately following the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.2(a) or (b), respectively, or any other form of warning deemed to be compliant with Proposition 65 now or in the future:

- (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 Warning:** Wilson may, but is not required to, use the alternative short-form warning as set forth in this § 2.2(b) (“**Alternative Warning**”) as follows:

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

2.3 A **Warning** or **Alternative Warning** provided pursuant to § 2.2 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, 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. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Wilson shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”).

To the extent Wilson elects to sell Covered Products online in the future, Wilson shall post the **Warning** or **Alternative Warning** on its own website and shall provide its third-party internet sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. In the event that Proposition 65’s warning requirements change in the future, Wilson may comply with such future warning requirements.

2.4 Compliance with Warning Regulations. The Parties agree that Wilson shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Product and the exposures at issue.

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

In settlement of all the claims referred to in this Settlement Agreement, Wilson shall make a one-time payment totaling Five Thousand Dollars (\$5,000.00) (the "Settlement Payment") divided into a Civil Fine of Five Hundred Dollars (\$500.00) (the "Civil Fine") and Four Thousand Five Hundred (\$4,500.00) reimbursement of costs (the "Reimbursement Cost") described in the following Section 4. The Civil Fine payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% remitted to OEHHA and the remaining 25% remitted to Espinoza. The Civil Fine 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, Wilson shall pay a late fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Fine. Within fifteen (15) business days of the Effective Date, Wilson shall issue two (2) separate checks, one to (a) "OEHHA" in the amount of Three Hundred Seventy Five (\$375.00); and one to (b) "Gabriel Espinoza" in the amount of One Hundred Twenty Five (\$125.00). Both checks 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. Wilson agrees to provide Espinoza’s counsel with a copy of the check(s) payable to OEHHA, simultaneous with its payments to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. Wilson 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 agreement 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 their work performed through the mutual execution of this agreement. Pursuant to such agreement, Wilson shall reimburse Espinoza's counsel for fees and costs relating to this matter. Within fifteen (15) business days of the Effective Date, Wilson shall issue a check payable to "Brotsky Smith" in the amount of Four Thousand Five Hundred (\$4,500.00) for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Wilson and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution and release by Espinoza, acting on his own behalf, of Wilson, its parents (including without limitation Amer Sports, Inc.), shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered Products (including but not limited to Walmart, Inc. and Walmart Apollo, LLC) as well as all manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims with respect to any violation of Proposition 65 based on exposure to CrVI that was alleged in the Notice, or 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 Defendant Releasees and/or 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 CrVI from use of the Covered Products.

5.2 Wilson's Release of Espinoza. Wilson, 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 exposure to CrVI from use of 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 Wilson, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 days after 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 HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Wilson 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 Wilson with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to CrVI from use of the Covered 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 Covered Products, Wilson 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 Covered 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 Wilson:

Wilson Sporting Goods Co.
Attention: General Counsel
130 East Randolph Street, #600
Chicago, IL 60601

With copy to:

Oliver D. Yang

Yang Law, LLC
311 S. Wacker Dr., Ste. 2470
Chicago, IL 60606
With electronic copy to: ody@yang.law

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: October 10, 2024

By: _____
Gabriel Espinoza

By: Ray Berens, General Counsel - Americas
on behalf of Wilson Sporting Goods Co.


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: 10 | 17 | 24


Date: October 10, 2024

By: 
Gabriel Espinoza

By: Ray Berens, General Counsel - Americas
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