

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Avedis Zildjian Co. (“Avedis Zildjian”). Together, Espinoza and Avedis Zildjian are collectively referred to as the “Parties.” Espinoza is a 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 Avedis Zildjian 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 Avedis Zildjian has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of *Vic Firth*® deluxe drumstick bags, including UPC # 750795051144, 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 *Vic Firth*® deluxe drumstick bags, including UPC # 750795051144, (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Avedis Zildjian.

**1.4 Notice of Violation.** On August 25, 2023, Espinoza served Guitar Center, Inc., Avedis Zildjian, Vic Firth, Inc., 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 Avedis Zildjian and such others, including public enforcers, with notice that alleged that Avedis Zildjian 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. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Avedis Zildjian denies and disputes 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 Avedis Zildjian 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 Avedis Zildjian of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Avedis Zildjian. 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, Avedis Zildjian maintains that it has not knowingly manufactured and distributed, or caused to be manufactured and distributed, 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.** Commencing within sixty (60) days after the Effective Date, and continuing thereafter, Products that Avedis Zildjian directly manufactures, imports, and distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. 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 - 2.4 shall not apply to any Reformulated Product.

**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 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**2.3 Clear and Reasonable Warning.** Commencing within 60 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Avedis Zildjian manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Avedis Zildjian to provide an exposure warning for Products that are in Avedis Zildjian's possession or entered the stream of commerce within 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a),(b), or (c) respectively:

(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](http://www.P65Warnings.ca.gov).

(b) **Alternative Short Warning:** Avedis Zildjian 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](http://www.P65Warnings.ca.gov).

(c) **Alternative Warning:** Avedis Zildjian may use any alternate warning that is adopted by State of California's Office of Environmental Health Hazard Assessment (OEHHA) and set out in Title 27, California Code of Regulations, Section 25600, *et seq.* applicable to the Product and the exposure at issue.

**2.4 A Warning or Alternative Short 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 Short Warning** shall be affixed to the Products 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 Short 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 Short 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, Avedis Zildjian shall provide the **Warning** or **Alternative Short 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”).

In addition to affixing the **Warning** or **Alternative Short Warning** to the Products or their packaging or labeling, the **Warning** or **Alternative Short Warning** shall be posted on websites where Avedis Zildjian offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Short 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. To comply with this Section, Avedis Zildjian shall (a) post the **Warning** or **Alternative Short Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers that Avedis Zildjian is aware of; and (b) if it does not have the ability to post the **Warning** or **Alternative Short Warning** on the websites of its third-party internet sellers that Avedis Zildjian is aware of, Avedis Zildjian shall provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the 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 Avedis Zildjian 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 exposure at issue.

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

In settlement of all the claims referred to in this Settlement Agreement, Avedis Zildjian 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

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Avedis Zildjian 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.** Avedis Zildjian 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.** Avedis Zildjian 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, Avedis Zildjian shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Avedis Zildjian, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Avedis Zildjian shall issue a check payable to "Brodsky Smith" in the amount of \$14,500.00 for delivery to the address identified in § 3.2(a)(i), above.

## **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Avedis Zildjian and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Avedis Zildjian, 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 (“Releasers”) for failure to provide warnings for alleged exposures to DEHP from use of the Products, and Releasers hereby release any such claims against Avedis Zildjian and its parents, subsidiaries (including, but not limited to, Vic Firth), affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Avedis Zildjian directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, (including, but not limited to, Guitar Center, Inc.), including but not limited to their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through 60 days after the Effective Date, based on 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 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 Avedis Zildjian’s Release of Espinoza.** Avedis Zildjian, 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 DEHP from 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 Avedis Zildjian, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 90 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Avedis Zildjian 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 Avedis Zildjian with this Settlement Agreement constitutes compliance by Avedis Zildjian with Proposition 65 with respect to exposure to DEHP from use of the Products.

**5.5. Public Benefit.** It is Avedis Zildjian's understanding that the commitments it has agreed to herein, and actions to be taken by Avedis Zildjian 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 Avedis Zildjian that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Avedis Zildjian's failure to provide a warning concerning exposure to DEHP from 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 Avedis Zildjian is in material compliance with this Settlement Agreement.

**6. REPRESENTATIONS:**

Espinoza and his counsel represent and warrant that as of the date of executing this Settlement Agreement, they are not aware of any potential, new, or pending claim against Avedis Zildjian in relation to any alleged violation of Proposition 65 other than the claims covered and released in this Settlement Agreement, and that they are not presently intending to bring a new claims against Avedis Zildjian in relation to any alleged violation of Proposition 65. This representation and warranty is intended to comply with Section 1-500(A) of the California Rules of Professional Conduct and is not intended to, nor shall it be construed to, restrict Brodsky Smith or any of their attorneys from practicing law.

**7. 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.

**8. 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, the Parties agree to meet and confer in good faith on how such changes may impact the current Settlement Agreement..

**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 Avedis Zildjian:

Lauren M. Michals  
Nixon Peabody LLP  
One Embarcadero Center, 32<sup>nd</sup> Fl.  
San Francisco, CA 94111

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.

**10. 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.

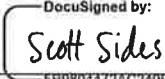
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 11/12/2024

By: \_\_\_\_\_  
Gabriel Espinoza

By:  \_\_\_\_\_  
Avedis Zildjian Co.

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:**

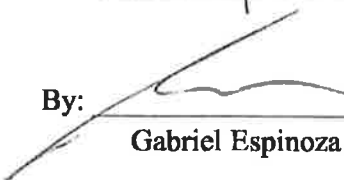
**AGREED TO:**

Date:

11 / 12 / 24

Date:

By:

  
Gabriel Espinoza

By:

Avedis Zildjian Co.