

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Freud America, Inc. (“Freud America”). Together, Espinoza and Freud America 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 Freud America 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 Freud America has exposed individuals to bisphenol A (BPA) from its sales of Diablo tool cases, UPC # 008925157694 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement are Diablo tool cases, UPC # 008925157694 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Freud America.

**1.4 Notice of Violation.** On November 22, 2024, Espinoza served Ganahl Lumber Company (“Ganahl”), Freud America, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) alleging that Freud America 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 BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Freud America 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 Products, have been and are in compliance with

all laws. Nothing in this Settlement Agreement shall be construed as an admission by Freud America of any fact, finding, conclusion, issue of law or violation of law, or of fault, wrongdoing, or liability by Freud America; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Freud America of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Freud America. 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, Freud America maintains that it has not knowingly manufactured, or caused to be manufactured, 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 Freud America directly manufactures, imports, 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 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are 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 Products.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean any Products subject to this Settlement Agreement that achieve a wipe test result equal to, or less than, 3 micrograms of BPA.


**2.2.1 Wipe Test Protocol.** The “Wipe Test Protocol” for determining if a Product is a Reformulated Product is as follows:

**2.2.1(a)** Accessible sample surface of Product is rubbed by wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F two (2) times along longitudinal, latitudinal and diagonal orientation.

**2.2.1(b)** Wipe sample swabs/paper is extracted with methanol on wrist shaker for one (1) hour and analyzed by LC/MS/MS.

**2.3 Clear and Reasonable Warning.** Commencing within 60 days after the Effective Date, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Freud America manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Freud America to provide an exposure warning for Products that entered the stream of commerce (*i.e.*, product that has been manufactured, has shipped, or has sold) within 60 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

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

 **“WARNING:”** [or] **“CA WARNING:”** [or] **“CALIFORNIA WARNING:”**  
This product can expose you to chemicals including bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Freud America 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:** Reproductive Harm - [www.P65Warnings.ca.gov](http://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 only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, 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, Freud America 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”). An **Alternative Warning** on a Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

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 Freud America offers Products for sale to consumers in California. 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. To comply with this Section, Freud America shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, 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 Freud America 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, Freud America shall pay \$1,000.00 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. For all amounts due and owing that are not received within the payment times set forth below, Freud America 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 thirty (30) days of the Effective Date, Freud America agrees to pay the Civil Penalties as follows: to (a) “OEHHA” in the amount of \$750.00; and to (b) “Gabriel Espinoza” in the amount of \$250.00. 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 by wire of wire transfer. Espinoza’s counsel will provide wire instructions to Freud America at the time the Settlement Agreement is fully executed.

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered to Espinoza’s counsel by way of wire transfer, who shall remit the payment to OEHHA on behalf of Freud America within ten days following receipt (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.** Espinoza agrees to provide Freud America's counsel with a copy of the check 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.** Espinoza's counsel shall provide a completed IRS 1099, W-9, or other tax forms as required for its payments to 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; 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, Freud America shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Freud America, negotiating a settlement in the public interest, and obtaining judicial approval of a settlement in the public interest. Within thirty (30) days of the Effective Date, Freud America shall issue payment to "Brodsky Smith" in the amount of \$18,500.00 by way of wire transfer.

Espinoza's counsel will provide wire instructions to Freud America at the time the Settlement Agreement is fully executed.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Freud America and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and on behalf of the public interest, and Freud America, 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 BPA from use of the Products, and Releasors hereby release any such claims against Freud America and its past and present parents, subsidiaries, affiliated entities, shareholders, members, marketplaces, directors, officers, managers, agents, employees, attorneys, representatives, insurers, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assignees (collectively, the "Releasees"), and all entities from whom Freud America directly or indirectly distributes to or sell the Products, or the materials contained therein, including but not limited to, manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers (including but not limited to Ganahl, and its respective subsidiaries, affiliates and parents, subsidiaries, franchisees, cooperative members and licensees) (collectively, "Downstream Releasees") from all claims for violations of Proposition 65 based on exposure to BPA from use of the Products with respect to any Products manufactured, distributed, or sold by Freud America within 60 days after the Effective Date.

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, claims, demands, rights, suits, agreements, promises, and all obligations, debts, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses,

liabilities, charges and demands against any of the Releasees and Downstream Releasees of any nature whatsoever, character, or kind, whether known or unknown, suspected or unsuspected, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related or arising from the Products manufactured, distributed, or sold by Freud America, Releasees, or Downstream Releasees.

**5.2 Freud America's Release of Espinoza.** Freud America, 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 BPA 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 Freud America, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims within 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 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Freud America 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 Freud America with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

**5.5. Public Benefit.** It is Freud America's understanding that the commitments it has agreed to herein, and actions to be taken by Freud America 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 Freud America that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Freud America's failure to provide a warning concerning exposure to BPA prior to 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 Freud America 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. 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. If Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Freud America shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the 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 Freud America:

President  
Freud America, Inc.  
218 Feld Avenue  
High Point, NC 27263

With copy to:  
Legal Department  
Freud America, Inc.  
1800 W. Central Road  
Mt. Prospect, IL 60056

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: \_\_\_\_\_

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

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

By: **Russell\_Kohl** Digitally signed by  
Russell\_Kohl  
Date: 2025.12.18  
10:24:13 -05'00'  
Freud America, Inc.

Its: \_\_\_\_\_

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

By: **sharon\_longaretti** Digitally signed by  
sharon\_longaretti  
Date: 2025.12.19 10:47:03  
-05'00'  
Freud America, Inc.

Its: \_\_\_\_\_

**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:**

Date:

12 / 22 / 25

By:

Gabriel Espinoza

**AGREED TO:**

Date:

By:

Freud America, Inc.

Its:

Date:

By:

Freud America, Inc.

Its: