

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Whaleco Inc. (“Whaleco”). Together, Espinoza and Whaleco 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 Whaleco 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 Whaleco has exposed individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of transparent daisy bags, # 385170414 without first providing California customers 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 transparent daisy bags, # 385170414 (the “Products”), that have been offered for sale on temu.com in California.

1.4 Notice of Violation. On January 13, 2025, Espinoza served Whaleco 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 Whaleco and such others, including public enforcers, with notice that alleged that Whaleco 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. Whaleco 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 either imported, offered for sale, sold or 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 against interest by Whaleco 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 against interest by Whaleco of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Whaleco. However, this Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

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 and both Parties have notice of such execution by 6 pm Pacific Time and, if not, then the next business day.


2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. Commencing within sixty (60) days after the Effective Date (the “Compliance Date”), and continuing thereafter, the Products offered for sale on temu.com in California shall either be: (a) Reformulated Products pursuant to Section 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to Sections 2.3 and 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 Section 2.2, below. The warning requirement set forth in Sections 2.3 and 2.4 shall not apply to any Reformulated Product, nor apply to any of the Products manufactured prior to the Compliance Date.

2.2 Reformulation Standard. “Reformulated Products” shall mean the 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. For the Products manufactured on and after the Compliance Date a clear and reasonable exposure warning as set forth in Sections 2.3 and 2.4 must be provided for any of the Products offered for sale in California on temu.com that is not a Reformulated Product. There shall be no obligation for Whaleco to provide an exposure warning for the Products that entered the stream of commerce prior to the Compliance Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in Sections 2.3(a) or (b), at Whaleco’s sole election, which election can change over time:

(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:** Whaleco may, but is not required to, use one of the two alternative short-form warnings¹ as set forth in this Section 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Risk of cancer and reproductive harm from exposure to di(2-ethylhexyl) phthalate (DEHP)- See www.P65Warnings.ca.gov.

 **WARNING:** Can expose you to di(2-ethylhexyl) phthalate (DEHP) a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.

2.4 A **Warning** or **Alternative Warning** provided pursuant to Section 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:**”. Also, at Whaleco’s sole election, which election can change over time,

¹ An **Alternative Warning** on a Product manufactured and labeled prior to January 1, 2028 may be provided using the form set forth in this Settlement Agreement or, as allowed under Title 27, California Code of Regulations, § 25603(c), in accordance with the previously applicable “safe harbor” short form of Warning; provided, however, use of the previously applicable “safe harbor” form of Warning as allowed under Section 25603(c) shall end for products manufactured on and after January 1, 2028. An **Alternative Warning** on a Product manufactured and labeled on or after January 1, 2028 shall be provided as allowed under Title 27, California Code of Regulations, § 25603(b).

Whaleco may elect to insert the capitalized and bolded abbreviation “CA” or the word “CALIFORNIA” prior to 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 Products 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, Whaleco 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”).

In addition to affixing the **Warning** or **Alternative Warning** to the Products’ packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on Whaleco’s proprietary websites where the Products are offered 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 Products display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. Whaleco represents that it does not sell the Products but only provides a platform for sellers to sell the Products to consumers in California through the proprietary TEMU website and application. If Whaleco were in the future knowingly and intentionally to sell the Products to authorized retailers or distributors or re-sellers selling the Products in California, then Whaleco shall provide such persons with written notice in accordance with Title 27, California Code of Regulations § 25600.2 of Warning obligations, if applicable, and such persons are not released under Section 5 herein if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that Whaleco and, as applicable, Releasees (as defined below) shall be deemed to be in compliance with this Settlement Agreement by either, in its sole election, which election can change over time, (a) adhering to Section 2 of this Settlement Agreement or (b) by complying with warning regulations adopted by the State of California's OEHHA applicable to the Products and the exposures at issue or (c) by not selling or offering for sale the Products to consumers in California, including not selling or offering for sale the Products through its proprietary platform TEMU and application. The Warning obligations of this Settlement Agreement do not apply to the Products not sold or given away to California consumers.

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

In settlement of all the claims referred to in this Settlement Agreement, Whaleco 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 Section 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Whaleco 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), subject to a one business day grace period to make payment.

3.1 Civil Penalty. Within thirty (30) days of the Effective Date, Whaleco shall issue two (2) separate checks for the Civil Penalty payment 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 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
Brotsky Smith

Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHHA (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 OEHHHA. Whaleco agrees to provide Espinoza's counsel with a copy of the check payable to OEHHHA, simultaneous with its penalty payment to Espinoza, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHHA.

(c) Tax Documentation. If requested, Whaleco agrees to provide a completed IRS 1099 for its payments to, and Espinoza agrees to provide current 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.

Except for the payments expressly detailed in Sections 3 and 4 herein, each Party is solely responsible for any and all of its costs arising from or related to this Agreement.

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 Settlement Agreement. Under these legal principles, Whaleco shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Whaleco, and negotiating a settlement in the public interest. Within thirty (30) days of the Effective Date, Whaleco shall issue a check payable to "Brodsky Smith" in the amount of \$16,500.00 for delivery to the address identified in Section 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Whaleco and Other Entities. This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Whaleco, 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, and Releasors hereby release any such claims against Whaleco and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, franchisees, cooperative members, licensees, predecessors, successors and assignees, including Five Bells Limited dba temu, TEMU, Five Bells Limited, and each entity or person who manufactured, distributed, imported, sold or offered for sale to Whaleco the Products, and each entity or person to whom Whaleco directly or indirectly distributes, offers for sale or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Compliance 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 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 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 up through the Compliance Date.

5.2 Whaleco's Release of Espinoza. Whaleco, 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 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 use of the Products up through the Effective Date.

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 Whaleco, 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 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 Initials)

_____ (Whaleco Initials)

Espinoza and Whaleco 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 Whaleco with this Settlement Agreement constitutes compliance by Whaleco and, as applicable, any Releasee, with Proposition 65 with respect to exposure to DEHP from use of the Products.

5.5. Public Benefit. It is the Parties' understanding that the commitments Whaleco has agreed to herein, and actions to be taken by Whaleco 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 the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Whaleco's (or, as applicable, any Releasee's) failure to provide a warning concerning exposure to DEHP prior to use of the Products it has either imported, or distributed, or sold, or offered for sale in California, or will either import, or distribute, or 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 Whaleco is in material compliance with this Settlement Agreement.

5.6 Beneficiaries. This Settlement Agreement shall inure to the benefit of Whaleco and its predecessors, successors and assigns and be binding upon them and, as applicable, inure to the benefit of the Releasees.

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. It is conclusively presumed that both Parties participated equally in the drafting of this Settlement Agreement and no presumption shall apply against a drafting Party of any term deemed ambiguous or disputed herein.

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. This Settlement Agreement is enforceable solely by the Parties hereto.

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 Whaleco:

Judith M. Praitis
Faegre Drinker Biddle & Reath LLP
1800 Century Park E., Ste. 1500
Los Angeles, CA 90067

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. Courtesy communications may be sent via Email.

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: June 26, 2025

By: _____
Gabriel Espinoza

By: 
Whaleco Inc.

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: 6 / 27 / 25

Date: _____

By:  _____
Gabriel Espinoza

By: _____
Whaleco Inc.