

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Vi-Jon, LLC (“Vi-Jon”). Together, Espinoza and Vi-Jon 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 Vi-Jon 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 Vi-Jon has exposed individuals to diethanolamine (“DEA”) from its manufacture of *CVS Health*® burn relief gels without first providing users and consumers of the Products with a clear and reasonable warning. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

**1.3 Product Description.** The products covered by this Settlement Agreement are *CVS Health*® burn relief gels that are or were manufactured, imported, distributed, sold, or offered for sale in California by or for CVS, including such products supplied by Vi-Jon and/or any other private label supplier for CVS (the “Products”).

**1.4 Notices of Violation.** On May 23, 2024, Espinoza served CVS Pharmacy, Inc. (“CVS”) and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “May Notice”). The May Notice provided CVS and such others, including public enforcers, with notice that alleged that CVS 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 DEA. No public enforcer has diligently prosecuted the allegations set forth in the May Notice.

On February 26, 2025, Espinoza served CVS, Vi-Jon, and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “February Notice”). The February Notice provided Vi-Jon and such others, including public

enforcers, with notice that alleged that Vi-Jon 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 DEA. No public enforcer has diligently prosecuted the allegations set forth in the February Notice.

The May Notice and February Notice are collectively referred to herein as, the “Notices.”

**1.5 No Admission.** Vi-Jon denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all Products that are or have been sold and distributed in California, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by Vi-Jon 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 Vi-Jon of any fact, finding, conclusion, issue of law or violation of law, all of which are specifically denied. However, this § 1.5 shall not diminish or otherwise affect Vi-Jon’s obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Vi-Jon 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 that both Parties have notice that this Agreement is fully executed.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation of Products.** In 2023, Vi-Jon voluntarily reformulated the Products to remove ingredients that could degrade or break down to DEA. All Products that Vi-Jon is and has been distributing for sale in California are reformulated Products pursuant to § 2.2, below. Nevertheless, for purposes of this Settlement Agreement, commencing within sixty (60) days after the Effective Date, and continuing thereafter, Products that Vi-Jon directly manufactures, imports, distributes, sells, or offers for sale in California shall continue to 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, a “DEA Free Reformulated Product”


is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirements set forth in §§ 2.3 and 2.4 shall not apply to any DEA Free Reformulated Product or to any Product manufactured prior to the Effective Date.

**2.2 DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated Product,” the Product must have DEA content that is not detectable or is below the Reporting Limit when analyzed by an ISO/IEC 17025 accredited laboratory using LC/MS/MS, GC/MS, or another scientifically reliable method suitable for qualitative and quantitative analysis of DEA in cosmetic or topical OTC products and their raw materials.


**2.2.1 Reporting Limit.** The “Reporting Limit<sup>1</sup>” is 20 mg/kg.

**2.3 Clear and Reasonable Warning.** Commencing within 60 days after the Effective Date, and continuing thereafter, except as set forth in § 2.2, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Vi-Jon manufacturers, imports, distributes, sells, or offers for sale in California that is not a DEA Free Reformulated Product. 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 diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Vi-Jon may, but is not required to, use the alternative short-form warnings as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING**[or] **“CA WARNING:”** [or] **“CALIFORNIA WARNING:”**: Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

[or]

 **WARNING**[or] **“CA WARNING:”** [or] **“CALIFORNIA WARNING:”** Can expose you to diethanolamine (DEA), a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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<sup>1</sup> The “Reporting Limit” the lowest concentration at which DEA can be detected in a sample of a Product by an accredited testing laboratory employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

**2.4** A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:** [or] “**CA WARNING:**” [or] “**CALIFORNIA 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. A **Warning** or **Alternative Warning** provided via an electronic device or automatic process does not apply to internet purchases, which are subject to the provisions of Section 25602(b). 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, Vi-Jon 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 that Vi-Jon owns, operates, or controls and on any other websites only to the extent required by applicable law and within Vi-Jon’s control. To the extent Vi-Jon does not own, operate, or control a third-party seller’s website, Vi-

Jon's obligations shall be limited to providing notice in accordance with Title 27, California Code of Regulations, Section 25600.2, if applicable. Vi-Jon also will comply with the requirements of Title 27, California Code of Regulations, Section 25600.2, if applicable.

**2.5 Compliance with Warning Regulations.** The Parties agree that Vi-Jon, and any entity released under Section 5 with respect to the Products, shall be deemed to be in compliance with Proposition 65 and 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. If after the Effective Date a California Court holds that it is required or allowed under Proposition 65 to calculate consumer product exposures using a different Reporting Limit, Defendant may demand Espinoza stipulate to modify this Settlement Agreement to use the Court-approved Reporting Limit for purposes of Section 2. If regulations or legislation are enacted or issued providing that a Proposition 65 warning for the Products is no longer required, a lack of warning will not thereafter be a breach of 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, Vi-Jon shall pay \$2,000.00 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 sent within the payment times set forth below, Vi-Jon 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 ten (10) business days of the Effective Date, Vi-Jon shall issue two (2) separate checks for the Civil Penalty payment: (a) one to "OEHHA" in the amount of \$1,500.00; and one to (b) "Gabriel Espinoza" in the amount of \$500.00. 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 “T” Street  
Sacramento, CA 95814.

**(b) Copy of Payments to OEHHA.** Vi-Jon agrees to provide Espinoza’s counsel with a copy of the check payable to OEHHA, simultaneously with its penalty payment to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

**(c) Tax Documentation.** Vi-Jon 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) calendar days of the Effective Date;

(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 Effective Date. Under these legal principles, Vi-Jon shall reimburse Espinoza’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Vi-Jon, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Vi-Jon shall send a check payable to “Brodsky Smith” in the amount of \$20,000.00 for delivery to the address identified in § 3.2(a)(i), above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Vi-Jon, CVS, and Product Chain Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Vi-Jon, 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”) arising from the failure to provide warnings for alleged exposures to DEA from use of the Products. Releasers hereby release such claims against Vi-Jon and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, insurers, attorneys, successors and assignees, and all entities in the chain of commerce for the Products, including without limitation, CVS, and each of its past and present parents, subsidiaries, affiliates, licensees, franchisees, cooperative members, officers, directors, employees, agents, attorneys, insurers, upstream and downstream distributors, wholesalers, customers, retailers, importers, exporters, contract manufacturers, co-packers, private

label suppliers, component part suppliers, raw material suppliers, and marketplace sellers of the Products (collectively, the “Releasees”), from all claims for violations of Proposition 65 through 60 days after the Effective Date based on exposure to DEA 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, 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 DEA from use of the Products, including without limitation any such claim based on the formulation, manufacture, importation, distribution, sale, offering for sale, labeling, marketing, or warning of the Products.

**5.2 Vi-Jon’s Release of Espinoza.** Vi-Jon, 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 DEA from use of the Products through 60 days after 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 Notices and relating to the Products will develop or be discovered. Espinoza, on behalf of himself only, on the one hand, and Vi-Jon, 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 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Espinoza and Vi-Jon each respectively 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 Vi-Jon or any Releasee with Section 2 of this Settlement Agreement, or otherwise with applicable Proposition 65 warning regulations adopted by OEHHA for the Products and the exposures at issue, constitutes compliance with Proposition 65 with respect to exposure to DEA from use of the Products.

**5.5. Public Benefit.** It is the Parties' understanding that the commitments Vi-Jon has agreed to herein, and the actions to be taken by Vi-Jon under this Settlement Agreement, including payment of a civil penalty, 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 Vi-Jon's failure to provide a warning concerning exposure to DEA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or with respect to any Releasee's manufacture, distribution, sale, or offering for sale of the Products 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 Vi-Jon 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.

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 Vi-Jon:

Thomas V. Wynsma  
Shook, Hardy & Bacon L.L.P  
5 Park Plaza, Ste. 1600  
Irvine, CA 92614

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: 03/30/2026

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

By:   
Darren Bess (Mar 30, 2025 10:43:41 CDT)  
Vi-Jon, LLC

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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: 05 - 05 - 2026

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

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

By: \_\_\_\_\_  
Vi-Jon, LLC