

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Micro Matic USA, Inc. (“Micro Matic”), with Brimer and Micro Matic each individually referred to as a “Party” and collectively as the “Parties.” Brimer is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Brimer alleges that Micro Matic employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Brimer alleges that Micro Matic manufactures, sells, and/or distributes for sale in California, vinyl/PVC tubing containing di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Brimer alleges that Micro Matic failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC tubing.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC tubing containing DEHP including, but not limited to, the *MicroMatic iPump, Part No. 3167*, manufactured, sold or distributed for sale in California by Micro Matic (“Products”).

1.4 Notice of Violation

On or about June 30, 2016, Brimer served Micro Matic and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Micro Matic violated Proposition 65 when it failed to warn its customers and consumers

in California that its Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Micro Matic denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 Micro Matic of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Micro Matic of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Micro Matic. However, this Section shall not diminish or otherwise affect Micro Matic's 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 executed by all parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate or Provide Warnings

Commencing 60 days after the Effective Date, and continuing thereafter, Micro Matic agrees to only manufacture, distribute, purchase for sale, or offer for sale in or into California: (a) "Reformulated Products" pursuant to Section 2.2 below, or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.4 below.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant

to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

2.3. Grace Period For Existing Inventory

Defendant represents that after Micro Matic received Brimer's Notice, it began to affix warnings to its Products that read: "PROPOSITION 65 WARNING: This product contains chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm." Brimer agrees that Micro Matic may continue to sell Products bearing this warning for 60 days after the Effective Date, or until they have exhausted their supply of warnings bearing this statement.

2.4 Clear and Reasonable Warnings Defined

Micro Matic agrees that within 60 days of the Effective Date and continuing thereafter, all Products it manufactures for sale or purchases for sale in California which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Micro Matic further agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statements:

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

⚠WARNING: This product can expose you to chemicals including DEHP, which is known to the to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, Micro Matic agrees to pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Brimer, and delivered to the address in Section 3.3 herein.

Within 5 days of the Effective Date, Micro Matic shall provide the penalty payment as follows: (1) a check in the amount of \$1,875 payable to “OEHHA;” and (2) a check in the amount of \$625 payable to “Russell Brimer Client Trust Account.”

3.2 Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Micro Matic agrees to pay \$17,000 to Brimer’s counsel for all fees and costs incurred investigating, bringing this matter to the attention of Micro Matic’s management, and negotiating a settlement that provides a significant public benefit. Micro Matic’s payment shall be due within 5 days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to “The Chanler Group.”

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Brimer's Release of Micro Matic

This Settlement Agreement is a full, final and binding resolution between Brimer, as an individual, and not on behalf of the public, and Micro Matic, of any violation of Proposition 65 that was or could have been asserted by Brimer on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Micro Matic, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Micro Matic directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, the "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Micro Matic in California before the Effective Date, as alleged in the notice of violation.

In further consideration of the promises and agreements herein contained, Brimer as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Brimer's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Brimer may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products, as alleged in the notice of violation, manufactured, distributed, sold and/or offered for sale by Micro Matic, before the Effective Date (collectively "claims"), against Micro Matic and Releasees.

The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public.

4.2 Micro Matic's Release of Brimer

Micro Matic, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Brimer and his attorneys and other representatives, for any and all actions taken or statements made by Brimer and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. 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.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, as to Micro Matic specifically as a result of a statutory exemption, or as to the Products, then Micro Matic may provide written notice to Brimer of any asserted change in the law, or its applicability to Micro Matic or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Micro Matic or the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

Micro Matic

Torben Toftegaard, President
Micro Matic USA, Inc.

Thomas S. Lee
Bryan Cave LLP

2386 Simon Court
Brooksville, FL 34604

3 Embarcadero Center, 7th Floor,
San Francisco, CA 94111

Brimer

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 1/20/2017

By: 

RUSSELL BRIMER

AGREED TO:

Date: 1/9/17

By: 

Jim Motush, Chief Financial Officer
MICRO MATIC USA, INC.