

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 CASE-MATE, INC., THE TJX COMPANIES,
15 INC.,

16 Defendants.

Case No.: RG20083570

**[PROPOSED] CONSENT
JUDGMENT**

Judge: James Reilly

Dept.: 25

Hearing Date: April 20, 2022

Hearing Time: 3:00 PM

Reservation #: 402748001768

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Case-Mate, Inc.
4 (“Case-Mate” or “Defendant”) with Espinoza and Defendant collectively referred to as the
5 “Parties” and each of them as a “Party.” Espinoza is an individual residing in California that seeks
6 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Case-Mate is alleged to be a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to Bisphenol A (BPA) from its sales of Case-Mate Karat Pearl iPhone cases without
12 providing a clear and reasonable exposure warning pursuant to Proposition 65. BPA is listed under
13 Proposition 65 as a chemical known to the State of California to cause reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.** On or about December 18, 2019, Espinoza served
15 Case-Mate and various public enforcement agencies with documents entitled “60-Day Notice of
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
17 violated Proposition 65 for failing to warn consumers and customers that use of Products expose
18 users in California to BPA. No public enforcer has brought and is diligently prosecuting the claims
19 alleged in the Notice. December 8, 2020, Espinoza filed a complaint (the “Complaint”) in the
20 matter.

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
23 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
24 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
25 claims which were or could have been raised in the Complaint based on the facts alleged therein
26 and/or in the Notice.

1 1.5 Defendant denies the material allegations contained in Espinoza’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Case-Mate Karat Pearl
10 iPhone cases that are manufactured, distributed and/or offered for sale in California by Case-Mate.

11 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
12 entered as a Judgment of the Court.


13 **3. WARNINGS**

14 3.1 **Warning or Reformulation of Products.** After the Effective Date, Case-Mate
15 agrees to manufacture, import, or offer for sale in California Covered Products that are: (a)
16 Reformulated Products pursuant to § 3.2, below; or (b) Covered Products that are labeled with a
17 clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this
18 Settlement Agreement, “Reformulated Products” are Products that are in compliance with the
19 standard set forth in § 3.2, below. The warning requirement set forth in §§ 3.3 and 3.4 shall not
20 apply to any Reformulated Products or Covered Products that entered the stream of commerce prior
21 to the Effective Date.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean any Covered
23 Products intended for retail sale in California that contains BPA on any component to which
24 consumers are *not* exposed to in excess of 3 micrograms per day of dermal exposure from solid
25 materials.

26 3.3 Where required, Case-Mate shall provide Proposition 65 warnings as follows. Case-
27 Mate may use any of the following warning statements in full compliance with this Section
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1 (a) **Warning.** The “Warning” shall consist of the statement:

2  **WARNING:** This product can expose you to chemicals including Bisphenol A
3 (BPA), which is known to the State of California to cause birth defects or other
4 reproductive harm. For more information go to www.P65Warnings.ca.gov.

5 (b) **Alternative Warning:** Case-Mate may, but is not required to, use the alternative
6 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

7  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

8 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
9 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
10 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
11 triangle with a black outline, except that if the sign or label for the Covered Product does not use
12 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
13 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
14 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
15 automatic process, providing that the warning is displayed with such conspicuousness, as compared
16 with other words, statements, or designs as to render it likely to be read and understood by an
17 ordinary individual under customary conditions of purchase or use. A warning may be contained
18 in the same section of the packaging, labeling, or instruction booklet that states other safety
19 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
20 those other safety warnings. Case-Mate and its downstream retailers shall have no obligation to
21 label Products that entered the stream of commerce prior to the Effective Date.

22 If Case-Mate sells Covered Products via an internet website to customers located in
23 California, the warning requirements of this section shall be satisfied if the foregoing warning
24 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
25 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
26 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
27 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
28 to or immediately following the display, description, price, or checkout listing of the Covered

1 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
2 associates it with the product(s) to which the warning applies.

3 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
4 compliance with this Consent Judgment by (1) adhering to §§ 3.1 - 3.4 of this Consent Judgment;
5 and (2) complying with warning requirements adopted by the State of California's Office of
6 Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

7 **4. MONETARY TERMS**

8 4.1 **Civil Penalty.** Case-Mate shall pay \$2,000.00 as a Civil Penalty pursuant to Health
9 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
10 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
11 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

12 4.1.1 Within ten (10) days of the Effective Date, Case-Mate shall issue two separate
13 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)
14 "Brodsky Smith in Trust for Espinoza" in the amount of \$500.00. Payment owed to Espinoza
15 pursuant to this Section shall be delivered to the following payment address:

16 Evan J. Smith, Esquire
17 Brodsky Smith
18 Two Bala Plaza, Suite 805
19 Bala Cynwyd, PA 19004

20 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
21 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 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

1 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
2 above as proof of payment to OEHHA.

3 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Case-Mate shall pay
4 \$27,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Espinoza's
5 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Case-Mate
6 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
7 interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
10 acting on his own behalf, and on behalf of the public interest, and Case-Mate, and its parents,
11 shareholders, members, directors, officers, managers, employees, representatives, agents,
12 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
13 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
14 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
15 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
16 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
17 violations of Proposition 65 based on exposure to BPA from use of the Covered Products
18 manufactured, distributed, or sold by Case-Mate prior to the Effective Date as set forth in the
19 Notice. It is the Parties' intention that this Consent Judgment shall have preclusive effect such that
20 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
21 public interest shall be permitted to pursue and/or take any action with respect to any violation of
22 Proposition 65 based on exposure to BPA from use of the Covered Products that was or could have
23 been alleged in the Complaint, or that could have been brought pursuant to the Notice against Case-
24 Mate and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").
25 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
26 with regard to exposure to BPA from use of the Covered Products.

1 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
2 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases Case-Mate, Defendant Releasees, and Downstream Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured, distributed, or sold by Case-Mate, Defendant Releasees or
10 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
11 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the
12 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
13 provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

18 5.3 Case-Mate waives any and all claims against Espinoza, his attorneys and other
19 representatives, for any and all actions taken or statements made (or those that could have been
20 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and/or with respect to Covered Products prior to the Effective Date.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
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1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Lauren Deeb
14 Nelson Mullins Riley & Scarborough LLP
15 19191 South Vermont Ave.
 Torrance, CA 90502

16 And

17 For Espinoza:

18 Evan J. Smith, Esquire
19 Brodsky Smith
 Two Bala Plaza, Suite 805
20 Bala Cynwyd, PA 19004

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

24 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and
26 the same document.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: _____

Date: 1/10/21

By: _____
GABRIEL ESPINOZA

By: [Signature]
CASE-MATE, INC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 3/2/2022

Date: _____

By: 
GABRIEL ESPINOZA

By: _____
CASE-MATE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court