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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

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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 currently manufactured, distributed and/or offered for sale in California by
11 Case-Mate.

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

14 **3. INJUNCTIVE RELIEF**

15 3.1 **Warning or Commitment not to manufacture Covered Products for sale in**
16 **California.** Commencing as of the Effective Date, Case-Mate agrees to (a) not manufacture the
17 Covered Products for sale in California; or (b) that the Covered Products are labeled with a clear
18 and reasonable exposure warning pursuant to §§ 3.2 and 3.3, below.

19 3.2 Where required, Case-Mate shall provide Proposition 65 warnings as follows. Case-
20 Mate may use any of the following warning statements in full compliance with this Section

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

22 ⚠ **WARNING:** This product can expose you to chemicals including Bisphenol A
23 (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.

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

26 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

1 3.3 **A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
2 **“WARNING:”** in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word **“WARNING:”** must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word **“WARNING:”**. The warning shall be affixed to or printed on the
7 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
8 automatic process, providing that the warning is displayed with such conspicuousness, as compared
9 with other words, statements, or designs as to render it likely to be read and understood by an
10 ordinary individual under customary conditions of purchase or use. A warning may be contained
11 in the same section of the packaging, labeling, or instruction booklet that states other safety
12 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
13 those other safety warnings. Case-Mate and its downstream retailers shall have no obligation to
14 label Products that entered the stream of commerce prior to the Effective Date.

15 If Case-Mate sells Covered Products via an internet website to customers located in
16 California, the warning requirements of this section shall be satisfied if the foregoing warning
17 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
18 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
19 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
20 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
21 to or immediately following the display, description, price, or checkout listing of the Covered
22 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
23 associates it with the product(s) to which the warning applies.

24 3.4 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
25 compliance with this Consent Judgment by (1) adhering to §§ 3.1 - 3.3 of this Consent Judgment;
26 and (2) complying with warning requirements adopted by the State of California’s Office of
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1 Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the exposure
2 at issue after the Effective Date.

3 **4. MONETARY TERMS**

4 4.1 **Civil Penalty.** Case-Mate shall pay \$2,000.00 as a Civil Penalty pursuant to Health
5 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
6 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
7 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

8 4.1.1 Within ten (10) days of the Effective Date, Case-Mate shall issue two separate
9 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b)
10 “Brodsky Smith in Trust for Espinoza” in the amount of \$500.00. Payment owed to Espinoza
11 pursuant to this Section shall be delivered to the following payment address:

12 Evan J. Smith, Esquire
13 Brodsky Smith
14 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

27 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Case-Mate shall pay
28 \$27,000.00 to Brodsky Smith (“Brodsky Smith”) as complete reimbursement for Espinoza’s

1 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Case-Mate
2 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
3 interest, pursuant to Code of Civil Procedure § 1021.5.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
6 acting on his own behalf, and on behalf of the public interest, and Case-Mate, and its parents,
7 shareholders, members, directors, officers, managers, employees, representatives, agents,
8 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
9 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
10 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
11 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
12 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
13 violations of Proposition 65 based on exposure to BPA from use of the Covered Products
14 manufactured, distributed, or sold by Case-Mate prior to the Effective Date as set forth in the
15 Notice/Action. It is the Parties' intention that this Consent Judgment shall have preclusive effect
16 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
17 or the public interest shall be permitted to pursue and/or take any action with respect to any violation
18 of Proposition 65 based on exposure to BPA from use of the Covered Products that were or could
19 have been alleged in the Complaint, or that could have been brought pursuant to the Notice against
20 Case-Mate and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").
21 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
22 with regard to exposure to BPA from use of the Covered Products.

23 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
24 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative
25 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
26 legal action and releases Case-Mate, Defendant Releasees, and Downstream Releasees from any
27 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
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1 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
2 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
3 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
4 from Covered Products manufactured, distributed, or sold by Case-Mate, Defendant Releasees or
5 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
6 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the
7 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which
8 provides as follows:

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

13 5.3 Case-Mate waives any and all claims against Espinoza, his attorneys and other
14 representatives, for any and all actions taken or statements made (or those that could have been
15 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
17 and/or with respect to Covered Products prior to the Effective Date.

18 6. INTEGRATION

19 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein exist
22 or have been made by any Party with respect to the other Party or the subject matter hereof.

23 7. GOVERNING LAW

24 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
28 to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Lauren Deeb
8 Nelson Mullins Riley & Scarborough LLP
9 19191 South Vermont Ave.
 Torrance, CA 90502

10 And

11 For Espinoza:

12 Evan J. Smith, Esquire
13 Brodsky Smith
14 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

22 **APPROVAL**

23 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
24 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
25 Defendant agrees it shall support approval of such Motion.

26 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
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1 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
2 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

13 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **13. RETENTION OF JURISDICTION**

16 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
17 Consent Judgment.

18 **14. AUTHORIZATION**

19 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood and agree to all of the terms and conditions of this
21 document and certify that he or she is fully authorized by the Party he or she represents to execute
22 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
23 explicitly provided herein each Party is to bear its own fees and costs.

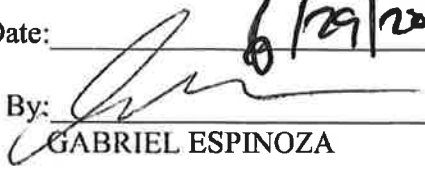
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AGREED TO:

AGREED TO:

Date: 6/29/2022

Date: _____

By: 
GABRIEL ESPINOZA

By: _____
CASE-MATE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: June 29th, 2022

By: _____

By: Tuan Pham Tuan Pham | CFO

GABRIEL ESPINOZA

CASE-MATE, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court