

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Sakar International, Inc. (“Sakar”), on the other hand, with EHA and Sakar each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California that alleges it is serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Sakar employs ten or more individuals 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 and Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Sakar manufactures, sells, and distributes for sale in California, binoculars that contain Di(2-ethylhexyl) phthalate (DEHP) and that it does so without first providing the warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement are Vivitar Pocket Sized Binoculars that contain DEHP and that are or were manufactured, sold or distributed for sale in California by Sakar (“the Products”).

1.4 Notice of Violation

On January 13, 2021, EHA served Sakar, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Sakar and others violated Proposition 65 when they failed to warn consumers in California of exposure to DEHP from the Products.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Sakar denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale 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 Sakar 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 Sakar of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Sakar. This Section shall not, however, diminish or otherwise affect Sakar'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 fourteen (14) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

As of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65 warning as set forth in this §§ 2.1 and 2.2 must be provided for all Products that Sakar manufactures, supplies and distributes for sale or use in California.

2.2 Warning Requirements

On or after the Effective Date, for Products that are set forth in §§ 2.1, Sakar shall provide one of the following warning statements:

- 1) **⚠WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate, 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.
- 2) **⚠WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov.

This warning statement shall be prominently displayed on the Products, on the packing of the Products, or on a placard, shelf tag, or sign, provided that the statement 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 prior to sale. If the warning statement is displayed on the Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites under the exclusive control of Sakar where the Products are sold into California.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or resolved by this Settlement Agreement, Sakar agrees to pay one thousand dollars (\$1,000.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by EHA. On or before the Effective Date, Sakar shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one seven hundred and fifty dollars (\$750.00) and (b) Environmental Health Advocates, Inc., in the amount of two hundred and fifty dollars (\$250.00).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section 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 Federal Express 2-Day Delivery:

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

All penalty payments owed to EHA shall be sent to:

Samantha Dice
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, by the Effective Date, Sakar agrees to pay eleven thousand dollars (\$11,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to Sakar's attention, and negotiating a settlement. Sakar shall provide their payment to EHA's counsel in the form of two separate checks: (1) one check for five thousand five hundred dollars (\$5,500.00) payable to "Glick Law Group, PC"; and (2) one check for five thousand five hundred dollars (\$5,500.00) payable to "Nicholas & Tomasevic, LLP".

3.3 Payment Address

All payments required under this Section shall be delivered by wire (contingent upon receipt of wiring instructions), or by check to:

Noam Glick
Glick Law Group, PC
225 Broadway, Suite 1900
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

Sakar agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Sakar cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Sakar receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Sakar

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Sakar of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, employees, officers, directors, representatives, attorneys, successors and assignees, against Sakar and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products was purchased by Sakar, and each entity to whom Sakar directly or indirectly distributed or sold the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEHP under Proposition 65 in Products manufactured, sold or distributed for sale in California by Sakar before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and on behalf of its past and current agents, employees, officers, directors, representatives, attorneys, successors and assignees, but not on behalf of the public, hereby waives any and all rights it has or may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Sakar and Releasees including, without limitation, all actions and causes

of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, costs or expenses including, but not exclusively, investigation fees, expert fees and attorney fees relating to all Products manufactured, distributed, or sold by Sakar before the Effective Date.

4.2 Sakar’s Release of EHA

Sakar, on its own behalf and on behalf of its agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA, its attorneys and other agents for any and all actions taken or statements made by EHA, its attorneys and other agents in the course of investigating the claims against Sakar, otherwise seeking to enforce Proposition 65 against Sakar in this matter, or with respect to any Products manufactured, distributed, or sold by Sakar before the Effective Date.

4.3 California Civil Code Section 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. EHA on behalf of itself only, on one hand, and Sakar on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 without regard to its conflicts of law principles.

7. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

8. 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:

For Sakar:

Sakar International, Inc.
195 Carter Drive
Edison, NJ 08807

with a copy to:

Matthew Kaplan
Tucker Ellis LLP
515 South Flower Street | Forty Second Floor
Los Angeles, CA 90071

For EHA:

Noam Glick
Glick Law Group, PC
225 Broadway, Suite 1900
San Diego, CA 92101

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.

9. 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

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

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

13. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

14. AUTHORIZATION

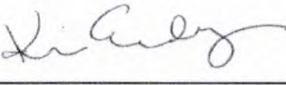
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

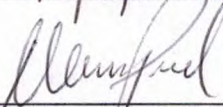
AGREED TO:

AGREED TO:

Date: December 10, 2021

Date: 12/14/21

By: 

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

SAKAR INTERNATIONAL, INC.