

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 Case-Mate, Inc. (“CM”), on the other hand, with EHA and CM each individually referred to as a “Party” and collectively as the “Parties.” EHA is a California corporation acting in the interest of the general public. EHA seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. CM, for purposes of this Settlement Agreement only, is alleged by EHA to be 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 CM manufactures, sells, and/or distributes for sale in California pop sockets that contain Di-n-butyl Phthalate (“DBP”) and that it did so without first providing the health hazard warning required by Proposition 65. DBP is listed pursuant to Proposition 65 as a chemical known to cause reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Case-Mate Minis Twinkle, that allegedly contains DBP and that is manufactured, sold and/or distributed for sale in California by CM (“Product”).

1.4 Notice of Violation

On July 23, 2021, EHA served Case-Mate, Inc., Target Corporation, as well as the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that CM violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DBP from the Product. 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 against CM.

1.5 No Admission

CM denies the material, factual, and legal allegations in the Notice and maintains (i) the anticipated exposure level from the Product do not pose a significant risk of reproductive harm and (ii) that all of the product it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CM 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 CM of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by CM. This Section shall not, however, diminish or otherwise affect CM 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

Beginning on the Effective Date, and continuing thereafter, CM shall not sell in California, or distribute for sale in California, the Covered Products, unless accompanied by warnings provided for in Section 2.2. As used in this Section 2.1, “distribute for sale in California” means to directly ship Covered Products into California or to sell Covered Products to a distributor CM knows will sell Covered Products in California.

2.2 General Warning Requirements

CM agrees that each warning shall be prominently placed with such conspicuousness, as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered

Products sold in California by CM that contains either of the following statements:

- 1) **⚠ WARNING:** This product can expose you to chemicals including Di-n-butyl Phthalate, which is known to the State of California to cause reproductive harm. For more information go to www.P65Warnings.ca.gov.
- 2) **⚠ WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

The warning statement shall be prominently displayed on the Covered Products, on the packaging of the Covered 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 Covered 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 Covered 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 CM where Covered Products are sold into California.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as the Effective Date, which Covered 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 referred to in this Settlement Agreement, CM agrees to pay two thousand dollars (\$2,000.00) 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. Within fourteen (14) days of the date this Settlement Agreement is executed by the Parties, CM shall issue two separate checks for the initial civil penalty

payment to (a) "OEHHA" in the amount of one thousand five-hundred dollars (\$1,500.00) and (b) Environmental Health Advocates, in the amount of five-hundred dollars (\$500.00).

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 Non-United States Postal Service 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:

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, within fourteen (14) days of the Settlement Agreement is executed by the parties, CM agrees to pay the total of eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of CM and negotiating a settlement. CM's payment shall delivered in the form of one check for eighteen thousand dollars (\$18,000.00) payable to "Entorno Law, LLP".

All payments required under Section 3.2 shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

CM 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 CM cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after CM receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of CM

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and CM 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, representatives, attorneys, successors and assignees, against (i) CM and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys; (ii) each upstream entity from whom the Product was purchased by CM; and (iii) each entity to whom CM directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Target Corporation and its parents, subsidiaries, affiliated entities under common ownership, directors, officer, agents, employees, and attorneys), franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DBP in the Product manufactured, sold or distributed for sale in California by CM 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 not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against CM and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively,

investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DBP in the Product manufactured, distributed, sold or offered for sale by CM, before the Effective Date.

4.2 CM's Release of EHA

CM, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in connection with the Product.

4.3 Mutual Release of Known and Unknown Claims

EHA, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, in its respective individual capacity only and not in its representative capacity, and CM, each provide a general release of the other including the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products. EHA and CM each acknowledge that they are each familiar with Section 1542 of the California Civil Code, which provides 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.

4.4 Public Benefit

It is the understanding of the Parties that the commitments CM has agreed to herein, and the actions to be taken by CM under this Settlement Agreement, confer a significant public benefit to the general public as set forth in California Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201.

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 apply within the State of California.

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 CM:

Lauren Deeb
Nelson Mullins Riley & Scarborough
19191 South Vermont Avenue
Torrance, CA 90502

For EHA:

Noam Glick
Entorno Law, LLP
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.

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

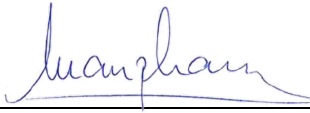
AGREED TO:

AGREED TO:

Date: 02/09/2023

Date: 2/16/23

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
CASE-MATE, INC.