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3 Environmental Health Advocates, Inc.

4 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
5 **IN AND FOR THE COUNTY OF ALAMEDA**

6 ENVIRONMENTAL HEALTH
7 ADVOCATES, INC.,

8 Plaintiff,

9 v.

10 SEGWAY, INC., a Delaware corporation;
11 AMAZON.COM, INC., a Delaware
12 corporation; and DOES 1 through 100,
13 inclusive,

14 Defendants.

15 Case No. 22CV009788

16 **[PROPOSED] CONSENT JUDGMENT**

17 (Health & Safety Code § 25249.6 *et seq.* and
18 Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Segway Inc (“Defendant” or “Segway”) with EHA and Segway each
5 individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Segway employs ten or more individuals and for purposes of this Consent Judgment only, is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Segway manufactures, imports, sells, and distributes for sale Segway Ninebot
16 Adjustable Seat Saddle that contains DEHP. EHA further alleges that Segway does so without
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.
18 Segway denies these allegations and asserts that its products are safe and in compliance with all
19 applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around January 4, 2022, EHA served Defendant Segway, Amazon.com, Inc., the
22 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
23 of Violation of Proposition 65 (“Notice”). The Notice alleged that Segway had violated Proposition 65
24 by failing to sufficiently warn consumers in California of the health hazards associated with exposures
25 to DEHP contained in seats products, including but not limited to Segway Ninebot Adjustable Seat
26 Saddle manufactured or processed by Segway that allegedly contain DEHP and are imported, sold,
27 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section
28 4.1).

1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
2 violations alleged in the Notice.

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are seats products, including but not limited to
5 Segway Ninebot Adjustable Seat Saddle manufactured or processed by Segway that allegedly contain
6 DEHP and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by
7 Releasees (as defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around April 12, 2022, EHA filed a Complaint against Segway for the alleged violations
10 of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

12 Segway denies the material factual and legal allegations of the Notice and Complaint and
13 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
14 California, including Covered Products, have been, and are, in compliance with all applicable laws,
15 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
16 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
17 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
18 of law. This Section shall not, however, diminish or otherwise affect Segway's obligations,
19 responsibilities, and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
22 Court has jurisdiction over Segway as to the allegations in the Complaint, that venue is proper in the
23 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
27 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.
28

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

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


8 **2.2 Clear and Reasonable Warnings**

9 For Covered Products that contain DEHP in a concentration exceeding the Reformulation
10 Standard set forth in section 2.1 above, and which are distributed or directly sold by Segway in the
11 State of California on or after the Effective Date, Segway shall provide one of the following warning
12 statements.

13 **Option 1:**

14  **WARNING:** This product can expose you to chemicals including
15 DEHP, which is known to the State of California to cause cancer and
16 developmental effects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov.

17 **Option 2:**

18  **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

19 This warning statement shall be prominently displayed on the Covered Products, on the packing
20 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
21 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
22 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
23 the Covered Products’ packaging, it must be in a type size no smaller than the largest type size used
24 for other consumer information on the product. In no case shall a warning statement displayed on the
25 Covered Products’ packaging appear in a type size smaller than 6-point type. The same warning shall
26 be posted on any websites under the exclusive control of Segway where Covered Products are sold into
27 California. Segway shall instruct any third-party website to which it directly sells its Covered Products
28 to include the same warning as a condition of selling the Covered Products in California.

1 **2.3 Sell-Through Period**

2 Notwithstanding anything else in this Consent Judgment, Covered Products that are
3 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be
4 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
5 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
6 of Segway, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
7 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
8 Effective Date.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Settlement Amount**

11 Segway shall pay ninety thousand dollars (\$90,000.00) in settlement and total satisfaction of
12 all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
13 civil penalties in the amount of nine thousand dollars (\$9,000.00) pursuant to Health and Safety Code
14 section 25249.7(b) and attorneys' fees and costs in the amount of eighty-one thousand dollars
15 (\$81,000.00) pursuant to Code of Civil Procedure section 1021.5.

16 **3.2 Civil Penalty**

17 The portion of the settlement attributable to civil penalties shall be allocated according to Health
18 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
19 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
20 twenty-five percent (25%) of the penalty paid to EHA individually. The nine thousand dollars
21 (\$9,000.00) in civil penalties shall be paid as follows:

- 22 ● One payment of \$6,750.00 to OEHHA, due 14 (fourteen) days after the Effective date.
- 23 ● One payment of \$2,250.00 to EHA, due 14 (fourteen) days after the Effective date.

24 All payments owed to EHA shall be delivered to the following address:

25
26 Isaac Fayman
27 Environmental Health Advocates
28 225 Broadway, Suite 2100
 San Diego, CA 92101

1 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
2 (Memo Line "Prop 65 Penalties") at the following addresses:

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Federal Express 2-Day Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 Segway agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
16 simultaneous with its penalty payment to EHA.

17 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
18 Relevant information is set out below:

- 19 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 20 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

21 **3.3 Attorney's Fees and Costs**

22 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
23 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
24 limited to investigating potential violations, bringing this matter to Segway's attention, as well as
25 litigating and negotiating a settlement in the public interest.

26 Segway shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
27 counsel by physical check or by electronic means, including wire transfers, at Segway's discretion, as
28 follows: eighty-one thousand dollars (\$81,000.00) in Attorney's Fees and Costs shall be paid in one
payment of \$90,000.00, due fourteen (14) days after the Effective Date.

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1 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this entity is:

2 Noam Glick
3 Entorno Law, LLP
4 225 Broadway, Suite 1900
5 San Diego, CA 92101

6 **4. CLAIMS COVERED AND RELEASE**

7 **4.1 EHA's Public Release of Proposition 65 Claims**

8 Plaintiff, acting on its own behalf and in the public interest, releases Segway, and its parents,
9 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
10 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns, including
11 Nineunion (Beijing) Technology Co. Ltd and Ninebot (Changzhou) Technology Co. Ltd. ("Defendant
12 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
13 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
14 (including but not limited to Amazon.com, Inc.), and marketplaces franchisees, franchisors,
15 cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities' owners,
16 directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives,
17 predecessors, successors, and assigns (collectively referred to as the "Releasees") from all claims for
18 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from Covered
19 Products as set forth in the Notice(s). Compliance with the terms of this Consent Judgment constitutes
20 compliance with Proposition 65 with respect to exposures to DEHP from Covered Products as set forth
21 in the Notice(s). This Consent Judgment is a full, final, and binding resolution of all claims under
22 Proposition 65 that were or could have been asserted against Segway and/or Releasees for failure to
23 comply with Proposition 65 for alleged exposure to DEHP from Covered Products. This release does
24 not extend to any third-party retailers selling the product on a website who, after receiving instruction
25 from Segway to include a warning as set forth above in section 2.2, do not include such a warning.

26 *[Rest of page intentionally left blank]*

1 **4.2 EHA’s Individual Release of Claims**

2 EHA, in its individual capacity, also provides a release to Segway and/or Releasees, which shall
3 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
4 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every nature,
5 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
6 actual exposures to DEHP in Covered Products manufactured, imported, sold, or distributed by Segway
7 before the Effective Date.

8 **4.3 Segway’s Release of EHA**

9 Segway on its own behalf, and on behalf of Releasees as well as its past and current agents,
10 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
11 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
12 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

14 **4.4 No Other Known Claims or Violations**

15 EHA and EHA’s counsel affirm that they are not presently aware of any actual or alleged
16 violations of Proposition 65 by Segway or for which Segway bears legal responsibility other than
17 those that are fully resolved by this Consent Judgment.

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved by the Court and shall be null and
20 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
21 by such additional time as the Parties may agree to in writing.

22 **6. SEVERABILITY**

23 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
24 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California as
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law, then Segway may
5 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
6 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
7 affected.

8 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
9 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
10 requirements of Proposition 65; or if DEHP cases are permanently enjoined by a court of competent
11 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
12 Amendment rights with respect to DEHP in Covered Products or Covered Products substantially
13 similar to Covered Products, then Segway shall be relieved of its obligation to comply with Section 2
14 herein.

15 **8. ENFORCEMENT**

16 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
17 to its reasonable attorneys' fees and costs.

18 **9. NOTICE**

19 Unless otherwise specified herein, all correspondence and notice required by this Consent
20 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
21 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
22 the following addresses:

23 If to Segway:

24 Garth Ward
25 Lewis Brisbois Bisgaard & Smith LLP
26 550 West C Street, Suite 1700
27 San Diego, CA 92101
28 garth.ward@lewisbrisbois.com

23 If to EHA:

24 Noam Glick
25 Entorno Law, LLP
26 225 Broadway, Suite 2100
27 San Diego, CA 92101
28 noam@entornolaw.com

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

1 **10. COUNTERPARTS; DIGITAL SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document.

5 **11. POST EXECUTION ACTIVITIES**

6 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
9 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
10 employ their reasonable best efforts, including those of their counsel, to support the entry of this
11 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
12 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
13 responding to any objection that any third-party may make, and appearing at the hearing before the
14 Court if so requested.

15 **12. MODIFICATION**

16 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
17 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
18 Party, and the entry of a modified consent judgment thereon by the Court.

19 **13. AUTHORIZATION**

20 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
21 have read, understand, and agree to all of the terms and conditions contained herein.

22 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

23 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
24 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
25 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
26 in the absence of such a good faith attempt to resolve the dispute beforehand.

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1 **15. ENTIRE AGREEMENT**


2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or
5 implied, other than those contained herein have been made by any Party. No other agreements, oral or
6 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.


7 **AGREED TO:**

AGREED TO:

8
9 Date: 9/14/2023

Date: 09/22/23

10
11 By: 
12 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
SEGWAY INC (Miao Tian, SUP).

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

JUDGE OF THE SUPERIOR COURT