

## **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 Znder, Inc. (“Znder”), on the other hand, with EHA and Znder 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. Znder, 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 Znder sells, offers for sale, and/or distributes for sale in California air pressure gauges 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 by the State of California to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Nilight 50026R Digital Tire Inflator Pressure Gauge (“Product”), that allegedly contains DBP and that is sold, offered for sale, and/or distributed for sale in California by Znder.

#### **1.4 Notice of Violation**

On March 8, 2022 EHA served Znder, Amazon.com, Inc. (“Amazon”), as well as the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that the noticed parties violated Proposition 65 when they 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 Znder.

### **1.5 No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Products' compliance with Proposition 65. Znder denies the material, factual, and legal allegations in the Notice and maintains that all of the product it sold, offered for sale, 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 Znder 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 Znder of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Znder. This Section shall not, however, diminish or otherwise affect Znder's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice and/or its compliance with this Settlement Agreement, Znder maintains that it has not knowingly or intentionally caused exposures to chemicals in violation of Proposition 65. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein.

### **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, Znder shall not sell in California, or distribute for sale in California, the Product, 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 the Product into California or to sell the Products to a distributor Znder knows will sell the Product in California.

## 2.2 General Warning Requirements

Znder 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* Product 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 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Znder that contains either of the following statements:

- 1) **⚠ WARNING:** This product can expose you to chemicals including DBP, 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](http://www.P65Warnings.ca.gov).
- 2) **⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning statement shall be prominently displayed on the Product, on the packaging of the Product, 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 Product's 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 Product's 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 Znder where the Product is sold into California.

## 2.3 Grace Period for Existing Inventory of the Product

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as the Effective Date, which Product is 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), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Znder 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 twenty-one (21) days of the date this Settlement Agreement is executed by the Parties, Znder 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

twenty-one (21) days after the Settlement Agreement is fully executed, Znder agrees to pay the total of twenty thousand five-hundred dollars (\$20,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Znder and negotiating a settlement. Znder's payment shall be delivered in the form of one check for twenty thousand five-hundred dollars (\$20,500.00) 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**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of Znder**

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Znder 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 Znder and each of its respective parents, subsidiaries, owners, affiliated entities under common ownership, directors, officers, shareholders, marketplaces, members, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees, licensors, and each upstream entity from whom the Product was purchased by or supplied to Znder, and each entity to or through whom Znder directly or indirectly distributed, shipped, offered for sale or sold the Product, including, but not limited to, Amazon, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, , and their respective parents, subsidiaries, owners, affiliated entities under common ownership, directors, officers, shareholders, marketplaces, members, employees, agents,

principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensees and licensors (“Releasees”), based on the actual or alleged failure to warn about exposures to DBP in the Product manufactured, sold, offered for sale or distributed for sale in California by Znder before the Effective Date, as alleged in the Notice. This Release shall also cover any Products that were in the stream of commerce prior to the Effective Date as provided in Section 2.3.

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 Znder and Releasees that it or they may have, of any nature, character, or kind, whether known or unknown, suspected or unsuspected, 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 Znder, before the Effective Date, including any Products that were in the stream of commerce prior to the Effective Date as provided in Section 2.3.

#### **4.2 Znder’s Release of EHA**

Znder, 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 Znder, 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 Znder 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 Znder has agreed to herein, and the actions to be taken by Znder 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. As such, it is the intent of Znder that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to Znder and/or the Releasees relating to the Product they have manufactured, sold, offered for sale, or distributed for sale in California, or will manufacture, sell, offer for sale, or distribute for sale in California, such private party action would not confer a significant benefit on the general public as to the Product addressed in this Settlement Agreement, provided that Znder is in material compliance with this Settlement Agreement.

#### **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, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to, the intent of the Parties in entering into this Settlement Agreement.

#### **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 Znder:

Cheryl S. Chang  
Jessica A. McElroy  
Blank Rome LLP  
2029 Century Park East 6<sup>th</sup> Floor  
Los Angeles, CA 90067

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: 12/27/2022

Date: 12/28/2022

By: 

By: 

Name:  
Title:  
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

Name:  
Title:  
ZNDER, INC.