

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (the “Agreement”) is entered into by and between Environmental Health Advocates, Inc., (“EHA” or “Releasor”), on the one hand, and Curv Group, LLC (“Curv”), on the other hand, with EHA, and Curv, 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. Curv is an Illinois corporation that 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 Curv manufactures, sells, and/or distributes for sale key tools that contain Bisphenol-A (BPA) and that it did so without first providing the health hazard warning required by Proposition 65. BPA is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Key Smart with Tile Smart Location sets that expose consumers to BPA and that are manufactured, sold or distributed for sale in California by Curv (“Products”).

1.4 Notice of Violation

On September 14, 2022 EHA served Curv Group LLC, Amazon.com Inc, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Curv violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to BPA 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 against Curv.

1.5 No Admission

Curv 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 Curv 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 Curv of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Curv. This Section shall not, however, diminish or otherwise affect any Party'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

Beginning on the Effective Date, and continuing thereafter, Curv 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 Curv knows will sell Covered Products in California.

2.2 Warning Requirements

For purposes of this Settlement Agreement, a clear and reasonable warning shall consist of one of the alternate forms of warning shown below, displayed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be seen, read, and understood by an ordinary individual under customary conditions prior to completing an online purchase. The warning shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING", as follows:

⚠WARNING: This product can expose you to chemicals including Bisphenol-A, which is known to the State of California to cause reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or (alternate form of warning):

⚠WARNING: Reproductive Harm – www.P65Warnings.ca.gov.

For selling Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears: (a) on the same web page on which Products are displayed and/or described; (b) on the same page as the price for the Products; or (c) on one or more web pages displayed to a purchaser prior to completing an online purchase. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Products, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.4 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.

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, Curv, 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 ten (10) days of the date this Settlement Agreement is executed by the Parties, Curv 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 execution of the Settlement Agreement by the Parties, Curv 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 Curv, and negotiating a settlement. Curv's payment shall be delivered in the form of one check for eighteen thousand dollars (\$18,000.00) payable to "Entorno Law, LLP".

3.3 Payment Addresses

The Entorno Law, LLP Payment shall be delivered to:

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

3.4 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Curv

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Curv 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 Curv and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Curv, and each entity to whom Curv directly or indirectly distributed or sold the Products, including, but not limited to BBB and its respective parents, subsidiaries, affiliates, directors, officers, members, employees, attorneys, agents, and Curv downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to BPA in the Products manufactured, sold or distributed for sale in California by Curv 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 Curv 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 BPA in the Products manufactured, distributed, sold or offered for sale by Curv, before the Effective Date.

4.2 Curv's Release of EHA

Curv, 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 Products.

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 Curv, 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 Products. EHA and Curv 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.

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. 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 Curv:

Kathryn (Kamil) Canale, Esq.
Bradley Gmelich Wellerstein LLP
700 N. Brand Blvd, 10th Floor
Glendale, CA 91203

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.

8. 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.

9. 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).

10. MODIFICATION

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

11. 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: 02/17/2023

Date: 2/19/2023

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
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CURV GROUP LLC