

# SETTLEMENT AGREEMENT

BETWEEN

SARA HAMMOND

AND

MAUI AND SONS

Sara Hammond (“Hammond”) and Maui and Sons (herein referred to as “MAS”) (Hammond and MAS are collectively referred to as the “Parties”), enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Hammond’s allegations that MAS violated Proposition 65 with respect to alleged DEHP in an arm band product. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

## 1. Introduction

- 1.1. Hammond alleges she is an individual who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- 1.2. MAS previously sold, imported, distributed, or manufactured at various times arm bands and other waterproof bags made with PVC/Vinyl material designed to hold electronic devices (for example Maui and Sons Sports Armband – RN # 82698 (referred to throughout as the “Covered Product”)).
- 1.3. Hammond alleges that the Covered Product contains Di(2-ethylhexyl)phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, and that MAS did not provide a required Proposition 65 warning in

compliance with the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”)).

- 1.4. On January 1, 1988 the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity.
- 1.5. DEHP is referred to hereafter as the “Listed Chemical.”
- 1.6. On or about November 14, 2016, Hammond alleges she served MAS, Burlington Coat Factory and related entities and certain relevant public enforcement agencies with a Sixty-Day Notice of Violation pursuant to California Health & Safety Code § 25249.7(d) alleging that the Covered Product contained the Listed Chemical (the “Notice”).
- 1.7. The Notice alleged that MAS violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to the Listed Chemical.
- 1.8. The Parties enter into this Settlement Agreement to settle disputed claims between them concerning the Covered Product’s compliance with Proposition 65 (the “Dispute”).
- 1.9. MAS disputes Hammond’s allegations described in this Settlement Agreement and in the Notice, and contends that all of its products, including the Covered Products, are in compliance with all laws and are completely safe for their intended use.

1.10. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any actual or alleged violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by MAS, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, licensees, licensors, suppliers, distributors or retailers of its products, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Hammond or MAS may have in any other legal proceeding as to allegations unrelated to the Dispute or claims released herein.

**2. Releases**

2.1. This Settlement Agreement is a full, final, and binding resolution between Hammond, acting in her individual capacity, on the one hand, and (a) MAS, and its current owners, parents, subsidiaries, affiliates, sister and related companies, licensees, licensors, suppliers, employees, shareholders, members, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively

“Releasees”) and (b) all entities to whom the Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers (including but not limited to Burlington Coat Factory), franchisees, and cooperative members (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to any Proposition 65 listed chemical or the failure to warn about exposure to any Proposition 65 listed chemical arising in connection with the Covered Product manufactured, imported, sold or otherwise distributed by MAS prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

- 2.2. Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) (collectively “Claims”), against Releasees and the Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in connection with the Covered Product sold or otherwise distributed by MAS up to the Effective Date, including without limitation to the extent that such claims

relate to Releasees' or Downstream Releasees' alleged exposure of persons to any Proposition 65 listed chemicals contained in the Covered Product or any failure by Releasees or Downstream Releasees to warn about exposures to any Proposition 65 listed chemical contained in the Covered Product.

- 2.3. Hammond acknowledges that she is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Hammond, on behalf of herself and her past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth below are paid in full.

- 2.4. MAS's release of Hammond

MAS 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 Hammond and her attorneys and other representatives, whether in

the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Product.

**3. MAS's Duties**

3.1. MAS shall not manufacture or import for sale in California the Covered Product after the Effective Date unless the Covered Product meet the reformulation standard set forth in Paragraph 3.2.

3.2. Upon the Effective Date, MAS agrees to only manufacture, import, or purchase for sale in or into California, "Reformulated Covered Products." For purposes of this Settlement Agreement, "Reformulated Covered Products" are Covered Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during reasonable foreseeable use). In order to determine compliance with this reformulation standard, MAS may rely on third party testing from an accredited laboratory.

**4. Payments**

4.1. MAS agrees to pay a total all inclusive sum of twenty-two thousand dollars (\$22,000) in complete resolution of all of Hammond's claims for civil penalties, damages, attorney's fees, and any other fees and expenses incurred investigating, sending a 60 day notice to MAS, and negotiating this settlement in the public interest. The payments shall be made in two installments, the first sent by overnight mail to Hammond's attorney no later than February 2, 2017 in the total amount of \$12,000, and the second sent by overnight mail no later than March 15, 2017 in the amount of \$10,000. The two installment payments shall be further broken down as follows:

4.1.1. Civil Penalty: MAS shall issue two separate checks for a total amount of one thousand dollars (\$1,000) as penalties pursuant to California Health & Safety Code § 25249.12 as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven hundred and fifty dollars (\$750), representing 75% of the total penalty; and (b) one check to Sara Hammond in the amount of two hundred fifty dollars (\$250), representing 25% of the total penalty. Both checks shall be delivered to the Law Office of Joseph D. Agliozzo, 18314 S. Broadway, Gardena CA 90248, via Federal Express or other trackable method. These payments shall be sent on or before February 2, 2017. Hammond shall have sole responsibility for transmitting OEHHA's share of the civil penalty to OEHHA.

Additionally, two separate 1099's shall be issued for the above payments. The first 1099 shall be issued to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 to Sara Hammond and shall be delivered to the Law Office of Joseph D. Agliozzo, PO Box 3582, Manhattan Beach, CA 90266. Hammond shall provide MAS with her Social Security Number for completion of the Form 1099 within a reasonable time after the full execution of this Settlement Agreement.

4.1.2. Attorneys' Fees and Costs: Twenty one thousand dollars (\$21,000) shall be paid to The Law Office of Joseph D. Agliozzo as Hammond's attorney, for all reasonable investigation fees and costs, attorneys' fees, and other

costs incurred as a result of investigating and bringing this matter to MAS's attention, and negotiating this Settlement Agreement in the Public interest. The checks shall be delivered to: Law Office of Joseph D. Agliozzo, 18314 S. Broadway, Gardena CA 90248, via Federal Express or other trackable method. The first payment in the amount of \$11,000 shall be sent no later than February 2, 2017 and the second check in the amount of \$10,000 shall be sent on or before March 15, 2017.

**5. Authority to Enter Into Settlement Agreement**

5.1. Hammond represents that she has full authority to enter into and legally bind Hammond to this Settlement Agreement.

5.2. The person signing this Settlement Agreement on behalf of MAS represents and warrants that he/she has been granted full authority to enter into and legally bind MAS to this Settlement Agreement.

**6. Report of the Settlement Agreement to the Office of the Attorney General of California**

Hammond shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

**7. Execution in Counterparts and Facsimile**

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to California Civil Code §§ 1633.1-1633.17.



**8. Entire Agreement**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings are merged herein. No other promises or agreements, oral or otherwise, exist to bind any of the Parties or are being relied on by any of the Parties in connection with the execution of this Settlement Agreement.

**9. Modification of Settlement Agreement**

Any modification to this Settlement Agreement shall be in writing and signed by the Parties. Any Party seeking to modify this Settlement Agreement or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify or enforce the Settlement Agreement.

**10. Application of Settlement Agreement**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Hammond and the Releasees and Downstream Releasees identified in Section 2 above.

**11. Enforcement of Settlement Agreement**

Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

**12. Notification Requirements**

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Hammond:

Joseph D. Agliozzo.  
Law Office of Joseph D. Agliozzo  
PO Box 3582  
Manhattan Beach, CA 90266

For MAS:

Jim Demet  
Maui and Sons  
17383 West Sunset Boulevard, Suite 400  
Pacific Palisades, CA 90272

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

**13. Severability**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**14. 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. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then MAS shall provide written notice to Hammond of any asserted change in the law, and shall have no further

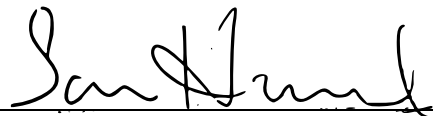
obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Product is so affected.

**15. Mutual Drafting**

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

SARA HAMMOND

Date: February 1, 2017

By:   
Printed Name: Sara Hammond

Maui and Sons

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

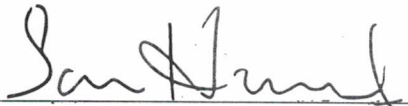
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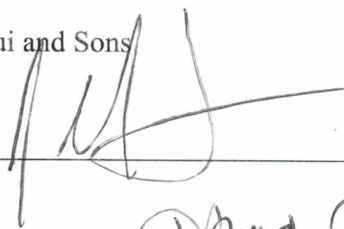
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SARA HAMMOND

Date: February 1, 2017

By:   
Printed Name: Sara Hammond

Date: 2/02/17

Maui and Sons  
By:   
Printed Name: Omer Daul  
Title: PREL