

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Alicia Chin and Shoe Cover, Inc.

This Settlement Agreement is entered into by and between Alicia Chin (“Chin”) and Shoe Cover, Inc. (“ShuBee”). Together, Chin and ShuBee are collectively referred to as the “Parties.” Chin is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. ShuBee employs ten or more individuals and is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.2 General Allegations

Chin alleges that ShuBee imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California the Arm Sleeve Cover # D SB SLEEVE (“Products”) that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm, and cancer.

1.3 Notice of Violation(s)

On or about May 5, 2017, Chin served ShuBee and the applicable public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that ShuBee violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.4 No Admission

ShuBee denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products it has imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered 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 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect ShuBee's obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" means September 27, 2017.

2. REFORMULATION AND WARNING

2.1 Commitment to Reformulate or Provide Warnings

Commencing within 90 days after the Effective Date, and continuing thereafter, ShuBee agrees, with respect to the Products as defined in subsection 1.2, to manufacture for sale, purchase for sale, distribute for sale, ship for sale, sell, or offer for sale in California only: (a) "Reformulated Products" as defined by subsection 2.2, below, or (b) Products that are sold with a clear and reasonable warning in accordance with subsection 2.3, below.

2.2 Reformulated Products

For purposes of this Consent Judgment, "Reformulated Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

For purposes of this Settlement Agreement and commencing within 90 days after the Effective Date, ShuBee shall, for all Products it imports, manufactures, distributes for sale, ships

for sale, sell, and/or offer for sale in California that are not Reformulated Products, provide clear and reasonable warnings on the Products' packaging. The warning language below is an acceptable warning should ShuBee choose to use it.

⚠ WARNING: This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects and other reproductive harm and cancer. For more information go to www.P65Warnings.ca.gov.

In the event ShuBee sells Products via an internet website to customers located in California, the warning requirements of this Section 2.3 may also be satisfied if the foregoing warning appears either: (a) on the same web page on which the Product is 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 purchase during the checkout process.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health & Safety Code § 25249.7(b), in full and final settlement of all the claims referred to in this Settlement Agreement, within three business days following the Effective Date, ShuBee shall pay a total of six hundred and seventy five dollars \$675 in civil penalties, allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d) with seventy-five percent (75%) paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and twenty five percent (25%) paid to Chin as follows: (1) by check made payable to "OEHHA" in the amount of \$506.25, at the address of "Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA 95812-4010"; and (2) by check made payable to "Alicia Chin" in the amount of \$168.75, at the address of "O'Neil Dennis, Esquire, 385 Grand Avenue, Suite 300, Oakland, California, 94610."

3.2 Reimbursement of Attorney's Fees and Costs

The parties acknowledge that Chin agreed to the terms set forth in Sections 2 and 3, above, without any agreement regarding payment of her attorney's fees and costs. Thereafter, the Parties resolved the attorney's fees and costs issue as follows: ShuBee agrees to pay, the O'Neil Firm, in full and final settlement, the amount of four thousand five hundred dollars (\$4,500) in attorney's fees and costs. Payment of half this amount or \$2,250 shall be made within three business days after the Effective Date, and the balance of \$2,250 shall be paid within 30 calendar days after the Effective Date or on or before October 27, 2017, by check made payable to "O'Neil Dennis" and delivered to:

O'Neil Law Firm
385 Grand Avenue, Suite 300
Oakland, CA 94610

4. CLAIMS COVERED AND RELEASED

4.1 Chin's Individual Release of Claims

Chin, in her individual capacity, provides a release to ShuBee, and to any of downstream entity, which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Chin of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products sold or distributed for sale by ShuBee before the Effective Date.

4.2 ShuBee's Release of Chin

ShuBee, 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 Chin and her attorneys and other representatives, for any and all actions taken or statements made by Chin and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of 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 Products, ShuBee shall provide written notice to Chin 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 Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve ShuBee from any obligation to comply with any pertinent state or federal toxics control laws.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Shoe Cover, Inc.:

Christy Fiveash
Vice President Operations
Shoe Cover, Inc.
110 Columbus West Drive
Macon, GA 31206

For Chin:

O'Neil Law Firm
Attn: O'Neil Dennis
385 Grand Avenue, Suite 300
Oakland, CA 94610

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. POST EXECUTION ACTIVITIES

Chin agrees to comply with the reporting form requirements referenced in 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 and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: _____

Date: 9-21-17

By: _____

Alicia Chin

By: 

Shoe Cover., Inc.

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AGREED TO:

Date: 9/20/17

Date: _____

By: 

Alicia Chin

By: _____

Shoe Cover., Inc.