

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”) and STEVEN MADDEN, LTD. (“Steven Madden”), with Steven Madden and CAPA each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction and General Allegations.

1.2.1 CAPA is a not-for profit corporation duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 Steven Madden employs ten or more persons 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 CAPA alleges that Steven Madden imported, sold, and/or distributed for sale in California, products containing Di-isononyl phthalate (“DINP”), a listed chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity, and failed to provide the health hazard warning required by Proposition 65 for exposures to DINP from its products, specifically the Triple Cosmetic Bag.

1.3 Product Description.

The products covered by this Settlement Agreement are the Triple Cosmetic Bags, which are imported, sold and/or distributed for sale in California by Steven Madden with UPC No. 889487243533 (“Covered Products”).

1.4 60 Day Notices of Violation and Exchange of Information.

On November 2, 2017, CAPA served Steven Madden and the requisite public enforcement agencies with a 60-Day Notices of Violation (“Notice”), alleging that Steven Madden violated Proposition 65. The Notices alleged that Steven Madden had failed to warn its customers and consumers in California of the health hazards associated with exposures to DINP from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided Steven Madden with test results in CAPA’s possession concerning its allegations. Steven Madden provided CAPA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

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 Covered Products’ compliance with Proposition 65 (the “Dispute”). Specifically, CAPA alleges that Steven Madden imported, sold or distributed for sale in the state of California the Covered Products, which contained DINP without first providing the clear and reasonable exposure warning required by Proposition 65. Steven Madden denies that such a warning is required under Proposition 65 or any otherwise applicable law.

Steven Madden further denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products that it has imported, sold and/or distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Steven Madden 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 Steven Madden of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Steven Madden. However, this section shall not diminish or otherwise affect Steven Madden’s obligations, responsibilities, and duties hereunder.

1.6 Effective Date.

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that the Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS

2.1 Reformulation Standard. Commencing on the Effective Date, and continuing thereafter, and Covered Products that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DINP of the meet the standard of a "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1%) DINP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DINP content in a solid substance.

2.2 Warning Option. Covered Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped out to consumers, retailers, or distributors after the Effective Date. No Proposition 65 warning for DINP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 Warning Language. Where required to meet the criteria set forth in Section 2.2, Defendant shall provide the following warning statements in the following circumstances: When sold or distributed directly to a California end user consumer, or when Steven Madden distributes or sells Covered Products to an intermediary that it reasonably believes might sell or distribute the Covered Products to California end users or consumers, Steven Madden shall provide the following warning statement with the unit conspicuously on the package. These warnings shall include one of the following:

- ▲ **WARNING:** This product can expose you to chemicals including Di-isononyl Phthalate (DINP), which is are 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.

- The warning shall be preceded by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline.

For Covered Products Manufactured Prior to August 30, 2018:

- ⚠ **WARNING:** This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Notwithstanding the foregoing examples, in the event that Steven Madden elects to provide warnings, shall be required to provide warnings that are in compliance with any regulations that are promulgated by the Office of Environmental Health Hazard Assessment (“OEHHA”) and that take effect after the Effective Date of this Agreement. In the event that OEHHA promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Steven Madden shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement, as long as such warning text and methods of transmission comply with OEHHA regulations.

2.4 Accessible Component. The term “Accessible Component” shall mean any component of the Covered Product that could be touched by a person during reasonably foreseeable use.

2.5 Compliance. The parties agree that compliance with the terms of this Agreement constitutes compliance with Proposition 65 with regard to the Covered Products.

3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

Steven Madden shall pay a civil penalty of \$1,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to CAPA. Steven Madden shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in the amount of \$750, representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the

amount of \$250, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to the Kawahito Law Group APC, who shall furnish a W-9 at least five calendar days before payment is due. The payments shall be delivered on or before March 30, 2018, to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Sepulveda, Blvd. Suite 2222
El Segundo, CA 90245

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, Steven Madden shall pay the total amount of \$15,500 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of Steven Madden, and negotiating a settlement. Steven Madden shall make the check payable to "Kawahito Law Group APC" and shall deliver payment on or before March 30, 2018 to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
Attn. CAPA v. Steven Madden, Ltd.
222 North Sepulveda Blvd., Suite 2222
El Segundo, CA 90245

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide Steven Madden with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days before payment is due.

5. RELEASE OF ALL CLAIMS

5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.

This Settlement Agreement is a full, final and binding resolution between CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, and Steven Madden, of any violation of Proposition 65 that was or could have been asserted by CAPA against Steven Madden, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, licensors, licensees, predecessors in interest, retailers, and/or distributors ("Releasees") based on their failure to warn about alleged exposures to DINP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Steven Madden (either directly or through the Releasees) in California before the Effective Date. This release is provided in CAPA's individual capacity and is not a release on behalf of the public.

In addition to the foregoing, CAPA, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and not in its representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to or arising from Covered Products manufactured distributed or sold by Releasees. With respect to the foregoing waivers and releases in this paragraph, CAPA hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

CAPA voluntarily and expressly waives the provisions of California Civil Code § 1542 available based on Steve Madden's alleged failure to warn about alleged exposures to DINP contained in the Covered Products. CAPA acknowledges that the effect and import of the provisions of the California Civil Code § 1542 has been explained to each of them by their respective counsels. CAPA further understands that the facts with respect to which the releases

contained in this Agreement are given may hereafter prove to be different from those now known or believed by the Parties, and the Parties hereby respectively assume and accept the risk thereof.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it or they may have 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 -- arising with respect to Steven Madden's compliance with Proposition 65 with respect to the Covered Products before the Effective Date.

5.2 Steven Madden's Release of CAPA.

Steven Madden on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CAPA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

5.3 Enforcement of Settlement Agreement.

Any party may file suit before the Superior Court of the County of Los Angeles 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.

6. SEVERABILITY

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

7. 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.

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 Steven Madden: Michael S. Paradise
 Steven Madden, Ltd.
 Attention: General Counsel
 52-16 Barnett Ave.
 Long Island City, New York 11104
 generalcounsel@stevemadden.com

with a copy to: Kerry E. Shea
 Davis Wright Tremaine LLP
 505 Montgomery St., Ste. 800
 San Francisco, CA 94111
 kerryshea@dwt.com

For CAPA: James K. Kawahito
 Kawahito Law Group APC
 Attn. CAPA v. Steven Madden, Ltd.
 222 North Sepulveda Blvd., Suite 2222
 El Segundo, CA 90245

with a copy to: Center for Advanced Public Awareness, Inc.
 Attn: Linda Droubay
 100 Promenade Circle, Suite 300
 Sacramento, CA 95834

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)

CAPA and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 3/14/2018

Date: _____

By: Ali Roberts
Center for Public Awareness, Inc.

By: _____
Steven Madden, Ltd.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: March 13, 2018

By: _____
Center for Public Awareness, Inc.

By: Michael Pankov, Exec. VP
Steven Madden, Ltd.

Steven
Madden, Ltd.