

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Alicia Chin and Dizzy, Inc.

This Settlement Agreement is entered into by and between Alicia Chin (“Chin”) and Dizzy, Inc. (“Dizzy”). Together, Chin and Dizzy 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.

Dizzy is considered a person in the course of doing business or 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 Dizzy imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California Jelly Bow Sandals # 2000208597 (“Products/s”) that contain di-n-butyl phthalate (“DBP”) without first providing the exposure warning required by Proposition 65. DBP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Notice of Violation(s)

On or about November 6, 2017, Chin served Dizzy, Inc., and Forever 21, Inc., and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Dizzy, Inc., and Forever 21, Inc. violated Proposition 65 by failing to warn its customers and consumers in California that the Product expose users to DBP. 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

Dizzy 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 Dizzy's obligations, responsibilities, and duties under this Settlement Agreement.

1.5 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" November 15, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION


2.1 Reformulated Products

Commencing on the Effective Date, and continuing thereafter, Dizzy agrees to only import, manufacture, distribute for sale, ship for sale, sell, and/or offer for sale in California (a) "Reformulated Products" or (b) Products with a clear and reasonable warning, as defined by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600). For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DBP 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 DBP content in a solid substance.

2.2 Clear and Reasonable Warning

For purposes of this Settlement Agreement and commencing on the Effective Date, Dizzy 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 as set forth in subsections 2.2(a) or (b) below. Dizzy shall employ the use of the warning symbol, which consists of a black exclamation point in a yellow equilateral triangle¹ with a bold black outline, provided in subsection 2.2(a) below. The warning symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word "WARNING". The 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 customer or user understands to which specific Products the warning applies, so as to minimize the risk of customer confusion.

- (a)  **WARNING:** This product can expose you to chemicals including DBP, 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, Dizzy shall pay a total of \$1,800 in civil penalties in accordance with this

¹ If the sign, label or shall tag for the product is not printed using the color yellow, the symbol may be provided in black and white.

section. Each penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) to Chin.

Dizzy shall issue checks for its initial civil penalty payment. The civil penalty to be paid as follows:

~~September~~ ^{October}
(i) on or before ~~September~~ ^{October} 15, 2018, a check/s shall be delivered to “OEHHA” in the amount of \$1,350, at the address of “Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA 95812-4010”;

~~September~~ ^{October}
(ii) by ~~September~~ ^{October} 15, 2018 a check payable to Alicia Chin in the amount of \$450, 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 and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, Dizzy expressed a desire to resolve Chin’s fees and costs. The Parties then attempted to, and did, reach an accord on the compensation due to Chin and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Settlement Agreement. Commencing October 15, 2018, Dizzy shall pay \$7000 for the fees and costs incurred by Chin in investigating, bringing this matter to Dizzy’s attention, and negotiating a settlement in the public interest in

payments of \$388.89 per month due and payable on the 15th day of the month and until paid in full. The payment shall be paid to "O'Neil Dennis" and delivered to:

O'Neil Dennis, Esq.
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 only and *not* in her representative capacity, also provides a release to Dizzy, Forever 21, Releasees, and Downstream Releasees 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 DBP in the Products sold or distributed for sale by Dizzy and Forever 21 before the Effective Date.

4.2 Dizzy's Release of Chin

Dizzy, 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 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 Products, then Dizzy shall provide written notice to Chin of any asserted change in the law, and shall have no further injunctive 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 Dizzy 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 Dizzy, Inc.:

Dizzy Inc.
c/o Adam Zipken, Esq.
Attorney at Law.
12955 Biscayne Blvd. #324
North Miami, FL 33181

For Chin:

O'Neil Dennis, Esq.
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:

7.2.18

Date:

August 31, 2018

By:



Alicia Chin

By:



Dizzy, Inc.