

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Paul Wozniak and The Haddad Apparel Group, Ltd.

This Settlement Agreement (Settlement Agreement) is entered into by and between Paul Wozniak (Wozniak) and The Haddad Apparel Group, Ltd. (Haddad) with Wozniak and Haddad collectively referred to as the “Parties.” Wozniak 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. Haddad 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 & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Wozniak alleges that Haddad manufactures, imports, sells and/or distributes for sale in California, lunch bags with vinyl zipper pulls that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Wozniak alleges is 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.

1.3 Product Description

The products that are covered by this Settlement Agreement are lunch bags with vinyl zipper pulls containing DEHP including, but not limited to, the *Levi’s Lunch Bag*, #9A6774, UO9, PKGH-573, UPC #6 17847 40333 0, manufactured, distributed, sold, and/or offered for sale by Haddad, hereinafter the “Products.”

1.4 Notice of Violation

On or about April 23, 2019, Wozniak served Haddad and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Haddad violated Proposition 65 when it failed 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.

1.5 No Admission

Haddad denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 Haddad of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Haddad of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 30, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS


2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, Haddad shall not manufacture for sale in the State of California, distribute into the State of California, or directly sell in the State of California Products that do not meet the Reformulation Standards as defined by Section 2.2 unless the Product meets the warning requirements under Section 2.3. For purposes of this Settlement Agreement, "distribute into the State of California" shall mean to directly ship a Product into California for sale in California or to sell a Covered Product to a distributor that Haddad knows or has reason to know will sell the Product in California. For avoidance of doubt, Products manufactured, distributed, shipped, sold and/or offered for sale by Haddad prior to the Effective Date, and that are no longer in Haddad's possession or control on the Effective Date, are not subject to this paragraph even if such products are sold or offered for sale in California by third parties after the Effective Date.

2.2 Reformulation Standards

“Reformulated Standards” means a Product must contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

As of the Effective Date, and continuing thereafter, a Clear and Reasonable Warning as set forth in this Section 2.3 must be provided for all Products that Haddad manufacturers, imports, distributes, sells, or offers for sale in California that do not meet the Reformulation Standards. There shall be no obligation for Haddad to provide a reasonable warning for Products that have already entered the stream of commerce and that are no longer in Haddad’s possession or control on the Effective Date. A “Clear and Reasonable Warning” is a Warning that complies with Proposition 65 regulations for consumer products in effect as of the Effective Date (Title 27, California Code of Regulations, section 25601, et seq.) or as such regulations may be amended by OEHHA from time to time in the future (e.g. a “short-form” warning affixed to the Product label that states: “ **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov”).

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Haddad agrees to pay a total of \$1,200 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (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 Wozniak.

Haddad will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Wozniak's counsel within one (1) week after the Effective Date. Haddad shall provide two checks made payable to: (a) "OEHHA" in the amount of \$900; and (b) "Paul Wozniak, Client Trust Account" in the amount of \$300. Thereafter, Wozniak's counsel shall send OEHHA's portion of the penalties paid by Haddad to OEHHA.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Wozniak and his 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 the agreement had been settled. Shortly after the other settlement terms had been finalized, Haddad expressed a desire to resolve Wozniak's fees and costs. The Parties then negotiated a resolution of the compensation due to Wozniak's counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement, Haddad shall reimburse Wozniak's counsel \$13,800. Haddad will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Wozniak's counsel within one (1) week after the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Wozniak investigating, bringing this matter to Haddad's attention and negotiating a settlement of the matter.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2550 Ninth Street, Suite 205
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Wozniak's Release of Haddad

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and *not* on behalf of the public, and Haddad, of any violation of Proposition 65 that was or could have been asserted by Wozniak on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Haddad, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Haddad directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Haddad in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Wozniak as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Wozniak's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Wozniak 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Haddad, before the Effective Date (collectively, Claims), against Haddad and Releasees.

Nothing in this Section affects Wozniak's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Haddad's Products.

4.2 Mutual Release of Known and Unknown Claims

Wozniak, on behalf of himself and his agents, attorneys, representatives, successors, and assigns, in his respective individual capacity only and not in his representative capacity, and Haddad, 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 the Products as set forth in the Notice. Wozniak and Haddad 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Haddad shall provide written notice to Wozniak 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 Haddad from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For Haddad:

Jack Haddad, President
The Haddad Apparel Group, Ltd.
100 West 33rd Street, Suite 1115
New York, NY 10001

With a Copy to:

David A. Shimkin, Esq.
Cozen O'Connor P.C.
601 S. Figueroa Street, Suite 3700
Los Angeles, CA 90017

For Wozniak:

Proposition 65 Coordinator
The Chanler Group
2550 Ninth Street, Suite 205
Berkeley, CA 94710

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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)

Wozniak agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by a 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.

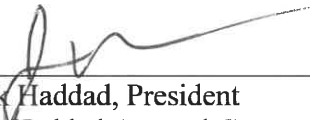
AGREED TO:

Date: 8/29/19

By: 
Paul Wozniak

AGREED TO:

Date: 8/29/19

By: 
Jack Haddad, President
The Haddad Apparel Group, Ltd.