

**PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2020-00640)**

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Steven Madden, Ltd. (“Madden”), with Davia and Madden each referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Davia

Davia is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Madden

For the sole and exclusive purpose of this agreement and the resolution of the subject claims, Steven Madden, Ltd. 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 §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Davia alleges that Madden is responsible for the design, manufacture, distribution and/or sale, in the State of California, of Madden brand purses (handbags and shoulder bags) made with faux-leather and vinyl components that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be referred to hereinafter as the “Listed Chemical.”

1.5 Notice of Violation

On March 12, 2020, Davia served Madden, retailers TJX Companies, Inc., Marmaxx and Marshalls.com and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic

chemical found in the Covered Products (hereafter defined) sold in California (AG Notice 2020-00640). This March 12, 2020, Notice of Violation to Madden shall hereafter be referred to as "Notice."

Madden represents that, as of the date this Agreement is executed, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as identified in the Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Madden. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Madden denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an admission by Madden of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Madden of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Madden. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Madden's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Madden as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term “Covered Product” shall mean all Madden branded backpack purses made with faux leather or other vinyl components (including, but not limited to, Steven Madden DT607190 Taupe/Multi BDevylin 193624584121).

2.2 The term “Phthalate Free” Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

2.3 “Effective Date” shall mean April 1, 2021.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Madden’s Control

No later than the Effective Date, Madden shall send a letter, electronic or otherwise (“Notification Letter”) to the primary sales contact or legal counsel at any retail store with outlets located in California that, after March 1, 2019, sold or maintained any inventory of Covered Products and that Madden reasonably understands or believes has inventory of Covered Products. The Notification Letter shall advise the recipient that Covered Products “have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm,” and request that the recipient either pull all Covered Products from store displays and return its entire inventory of Covered Products to Madden or label the Covered Products remaining in inventory for sale in California with a label that complies with Section 3.3. The Notification Letter shall request a response from the recipient within 15 days, confirming that the letter was received. Madden shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia’s written request.

3.2 Product Reformulation Commitment

3.2.1 No later than the Effective Date, Madden shall provide the Phthalate Free concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered Product and to its vendors of any vinyl material for any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product or to supply any Covered Product that is not Phthalate Free. Madden shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

3.2.2 After the Effective Date, Madden shall provide the Phthalate Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Covered Product, to its vendors of any vinyl material for any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to purchase and acquisition of any Covered Product or any vinyl component for any Covered Product from any new vendor, Madden shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free concentration standard in all materials comprising the Covered Product. For every Covered Product Madden manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date, Madden shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia. For every Covered Product Madden contends meets the Phthalate Free concentration standards and intends to offer for sale to any California Customer without a warning pursuant to Section 3.3 below, Madden shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from

the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia.


3.2.3 No later than the December 1, 2020, Madden shall not manufacture or cause to be manufactured any Covered Product unless such Covered Product meets the Phthalate Free concentration standards of this Agreement. No later than the April 1, 2021, Madden shall not distribute or cause to be distributed to any TJX Companies, Inc. or Marmaxx retail store in California, or Marshalls.com, any Covered Product unless such Covered Product meets the Phthalate Free concentration standards of this Agreement.

3.3 Interim Covered Product Warnings


For any inventory of Covered Products obtained by Madden prior to the Effective Date that is not confirmed to be Phthalate Free, Madden shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Covered Product unless such Covered Product is shipped with product label as set forth hereafter.

Each such warning utilized by Madden for any Covered Product shall be prominently placed either on the product or its labeling 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 either be attached directly to each Covered Product so that it is visible during expected retail display of Covered Products. Each warning shall include the yellow triangle with an internal exclamation point and state:


 **WARNING** [The vinyl materials of] this product can expose you to chemicals, including DEHP, that 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.

or

 **WARNING** Cancer and Reproductive Harm. - www.P65Warnings.ca.gov

3.4 Internet Ecommerce Covered Product Warnings

After the Effective Date, a warning must be given on an e-commerce or other website owned or operated by or for Madden in conjunction with the sale, or offer of sale, of any Covered Product that is not confirmed to be Phthalate Free. A warning will satisfy this requirement if it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text:

 **WARNING:** This product can expose you to chemicals, including DEHP, that 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. [Please wash hands after use and before consuming food or beverages]

The bracketed language is optional.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Consent to Judgment, Madden shall pay a total of \$3,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Madden for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to counsel for Madden that the Covered Products have been distributed in California in sales volumes materially different than those identified by Madden prior to execution of this Agreement, and Madden does not provide Davia with competent and credible evidence to dispute this claim, then Madden shall be liable for an additional penalty amount of \$10,000.00. Davia represents that she does

not presently have such information. Madden shall also be liable for any reasonable, additional attorney fees expended by Davia, up to \$10,000 or as determined by the Court, in discovering such additional retailers or sales. Davia agrees to provide counsel for Madden with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Madden shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Madden and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement of Davia's Fees and Costs

The Parties acknowledge that Davia 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 this fee issue to be resolved after the material terms of the agreement had been settled. Madden expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia 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 in this matter, except fees that may be incurred on appeal. Under these legal principles, Madden shall pay Davia's counsel the amount of \$19,000 for fees and costs incurred investigating, litigating and enforcing this matter.

4.4 Payment Procedures

Madden shall satisfy their obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2020-00640"), in the amount of \$2,250 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2020-00640") in the amount of \$750.

Madden shall satisfy their obligation to pay attorney fees and costs pursuant to Section 4.3 by

delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2020-00640") in the amount of \$19,000.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address within 15 business days after execution of this Agreement:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Madden may also pay any monies due under this Section by wire to plaintiff's counsel's Trust Account, with wire instructions to be provided separately.

Madden shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within five business days of the due date for such payment.

While the obligations of this agreement are binding upon execution, the Release of Madden shall not become effective until after all monetary payments have been made by Madden and all funds have cleared.

Madden shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2020-00640") and "Susan Davia" (Memo line "Prop 65 Penalties, 2020-00640") in the amount agreed to by the Parties or ordered by the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Madden shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2020-00640") in the amount agreed upon by the Parties or ordered by the Court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Madden shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) business days of the due date for such payment.

4.5 Issuance of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Madden shall issue three separate 1099 forms, as follows:

- (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

5. RELEASES

5.1 DAVIA'S RELEASE OF MADDEN

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Madden of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Madden and each of their directors, officers, employees, attorneys, agents, parents, and subsidiaries, and each entity to which Madden directly distributes or sells Covered Products, including, but not limited to TJX Companies, Inc., Marmaxx and Marshalls.com ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold or offered for sale to a California customer before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Madden with regard to the alleged or actual failure to

warn about exposure to DEHP from Covered Products manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as Madden remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia 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, - - limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Madden before the Effective Date (collectively "claims"), against Madden and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release herein 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 Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Madden or Releasees before the Effective Date. Davia acknowledges that she is 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.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code 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. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 This section 5.1 release shall not extend upstream to any entities, other than Madden, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to Madden.

5.2 Madden's Release of Davia

The Release by Davia is mutual. Madden, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia 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. Madden each acknowledges that it is 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 RELEASING PARTY.

Madden expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

7. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

8. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail or electronic mail to the following:

For Madden:

GeneralCounsel@stevemadden.com
with a copy to Madden's counsel:
Kerry Shea (kerryshea@dwt.com)
Davis Wright Tremaine LLP
505 Montgomery St. 8th floor
San Francisco, CA 94111

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Davia agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f).

10. MODIFICATION

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

11. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

12. ATTORNEY'S FEES

12.1 Should either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §§ 1021 and 1021.5.

12.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

12.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This 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 Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this 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

Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

14. COUNTERPARTS, FACSIMILE SIGNATURES

This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: March <u>22</u>, 2021</p> <p>DocuSigned by: <i>Lisa Keith</i></p> <p>3D80EFF445EF496...</p> <p>Lisa Keith General Counsel</p>	<p>Dated: March <u>16</u>, 2021</p> <p><i>Susan Davia</i></p> <p>Susan Davia</p>
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