

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand and Steven Madden, Ltd. (“MADDEN”) on the other hand, with MADDEN and EP each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Introduction and General Allegations.

1.2.1 EP is a limited liability company 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 EP alleges that MADDEN, employs ten or more persons, and EP alleges that MADDEN 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 EP alleges that MADDEN imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contained Di-(2-ethylhexyl) phthalate DEHP in amounts greater than 1000 parts per million, and for which required a health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

1.2.4 MADDEN disputes that the Covered Products contained DEHP at over 1000 parts per million.

1.3 Product Description.

The products covered by this Settlement Agreement are the MADDEN Pink Wallets, SKU 036203943, which were imported, sold and/or distributed for sale in California by MADDEN (“Covered Products”).

1.4 60 Day Notice of Violation and Exchange of Information.

On July 12, 2021, EP served MADDEN, Marshalls of MA, Inc. (“Marshalls”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that MADDEN and Marshalls violated Proposition 65. The Notice alleged that MADDEN and Marshalls had failed to warn their customers and consumers in California of the health hazards associated with exposures to DEHP from the import, sale and/or distribution of the Covered Products.

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. Specifically, EP alleges that MADDEN imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable exposure warning required by Proposition 65. MADDEN denies that such a warning is required under Proposition 65.

MADDEN further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured and/or sold and 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 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 MADDEN of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by MADDEN. This Section shall not, however, diminish or otherwise affect MADDEN’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date.

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

2. INJUNCTIVE RELIEF:

2.1 **Standard.** Commencing on the Effective Date, and continuing thereafter, MADDEN shall ensure that Covered Products that it imports, manufactures, ships to be sold or offers for sale or purchase in or into California, or sells in California shall contain less than or equal to 1,000 parts per million (0.1%) DEHP 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 DEHP content in a solid substance. Covered Products currently in the channels of distribution with distributors and retailers may continue to be sold-through. However, as of the Effective Date, MADDEN may not distribute or sell new Covered Products in California that contain more than 1,000 parts per million (0.1%) DEHP in each Accessible Component.

2.2 **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.

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

MADDEN shall pay a civil penalty of \$500 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 EP. 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 \$375 representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for EnviroProtect” in the amount of \$125, 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 Kawahito Law Group APC, who shall furnish a W-9 for all payees at least ten business days before payment is due. The payment shall be delivered within 10 days of the Effective Date to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that EP 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 EP 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, MADDEN shall pay the total amount of \$16,500 for fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of MADDEN, and negotiating a settlement. MADDEN shall wire the funds (instructions will be provided upon request) or make payment by check payable to “Kawahito Law Group APC.” Payment shall be made to the following address:

James Kawahito, Esq.
Kawahito Law Group APC
222 N. Pacific Coast Hwy. Suite 2222
El Segundo, CA 90245

To allow for the issuance of a timely payment to be rendered pursuant to the above, EP shall provide MADDEN with a completed IRS Form W-9 for the Kawahito Law Group APC at least ten business days prior to payment.

5. RELEASE OF ALL CLAIMS

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

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, EP, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of

legal action and releases all claims relating to alleged DEHP exposures from the Covered Products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) MADDEN, (b) each of MADDEN's downstream distributors (including but not limited to Marshalls), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) MADDEN's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities. (collectively "Releasees").

EP also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and not in its representative capacity, 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 any nature, character or kind, known or unknown, suspected or unsuspected, against MADDEN and the Releasees relating to alleged DEHP exposures from the Covered Products. EP acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

EP, only on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, 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 California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

5.2 MADDEN'S Release of EP.

MADDEN on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against EP, its attorneys and other representatives, for any and all actions taken or statements made by EP 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.

5.4 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; (c) a recognized overnight courier; or (d) by email to designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to MADDEN:

Lisa Keith
General Counsel

Steven Madden, Ltd.
52-16 Barnett Avenue
Long Island City, NY 11104
GeneralCounsel@stevemadden.com

For Notices to EP:

EnviroProtect, LLC.
3142 W. 59th Pl.
Los Angeles, CA 90043
Email: enviroprotectca@gmail.com

with a copy to:

James K. Kawahito, Esq.
Kawahito Law Group APC
Attn. EP v. MADDEN
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

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)

EP and its 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:

Date: September 30, 2021

By: *Emilio Salazar*
EnviroProtect, LLC

AGREED TO:

Date: September 30, 2021

By: DocuSigned by:
Lisa Keith
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Steven Madden, Ltd.