

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) on the one hand, and Steven Madden, Ltd. and Steven Madden Retail, Inc. (collectively, “Steven Madden”) on the other hand. Together, Bell and Steven Madden are collectively referred to as the “Parties.” Bell is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Bell alleges that Steven Madden is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Bell alleges that Steven Madden has exposed individuals to bisphenol A (BPA) from its sales of Steven Madden footwear that exposes users to BPA including, but not limited to, Dolce Vita clear strap heels, UPC # 195857128806 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are footwear including, but not limited to, Dolce Vita clear strap heels, UPC # 195857128806 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Steven Madden.

1.4 Notice of Violation. On December 14, 2023, Bell served Nordstrom, Inc., NIHC, Inc. (collectively, “Nordstrom”), Steven Madden, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”) alleging that Steven Madden was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Dolce Vita clear strap heels, UPC # 195857128806 will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Steven Madden denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been 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 Steven Madden 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 Steven Madden of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Steven Madden. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Steven Madden maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. Commencing within ninety (90) days after the Effective Date, and continuing thereafter, Products that Steven Madden directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Products.

2.2 Reformulation Standard. “Reformulated Products” shall mean any Products subject to this Settlement Agreement that achieve a wipe test result equal to, or less than, 3 micrograms of BPA.


2.2.1 Wipe Test Protocol. The “Wipe Test Protocol” for determining if a Product is a Reformulated Product is as follows:


2.2.1(a) Accessible sample surface of Product is rubbed by wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F sixty (60) times along longitudinal, latitudinal and diagonal orientation.


2.2.1(b) Wipe sample swabs/paper is extracted with methanol on wrist shaker for one (1) hour and analyzed by LC/MS/MS.

2.3 Clear and Reasonable Warning. Commencing within 90 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Steven Madden manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Steven Madden to provide an exposure warning for Products that entered the stream of commerce within 90 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the following statement or other safe harbor language that is in compliance with Proposition 65:

 **WARNING:** This product can expose you to chemicals including bisphenol A (BPA), which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

 (b) **Alternative Warning:** Steven Madden may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows or other safe harbor language that is in compliance with Proposition 65:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

2.4 A Warning or Alternative Warning provided pursuant to § 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The Warning or Alternative Warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic

process, provided that the Warning or Alternative Warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The Warning or Alternative Warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

In addition to affixing the Warning or Alternative Warning to the Product's packaging or labeling, the Warning or Alternative Warning shall be posted on websites where Steven Madden offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the Warning or Alternative Warning, or a clearly marked hyperlink using the word "WARNING," appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. Steven Madden also will comply with Title 27, California Code of Regulations, Section 25600.2.

2.5 Compliance with Warning Regulations. The Parties agree that Steven Madden shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Product and the exposures at issue within 90 days after the Effective Date.

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

3.1 In settlement of all the claims referred to in this Settlement Agreement, Steven Madden shall pay \$2,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Bell.

3.2 Tax Documentation. Steven Madden agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Ema Bell” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

4.1 The Parties acknowledge that Bell and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Bell and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Steven Madden shall reimburse Bell’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Steven Madden, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Steven Madden shall make payment to “Brodsky Smith” in the amount of \$18,000.00.

5. SETTLEMENT PAYMENT

5.1 Pursuant to Sections 3 and 4 herein, Steven Madden agrees to pay a total of twenty thousand dollars (\$20,000.00) within 10 days of the Effective Date (the “Settlement Payment”). The Settlement Payment shall be made by wire transfer pursuant to the wire transfer instructions provided separately for security purposes.

6. RELEASE OF ALL CLAIMS

6.1 Release of Steven Madden and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Steven Madden, of any violation of Proposition 65 that was or could have been asserted by Bell

or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to BPA from use of the Products, and Releasers hereby release any such claims against Steven Madden and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Steven Madden directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Nordstrom, and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 based on exposure to BPA from use of Products offered for sale, distributed and/or sold in California through the Effective Date and/or within 90 days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Bell, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to BPA from use of the Products.

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

6.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Bell on behalf of herself only, on one hand, and Steven Madden, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims until 90 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bell and Steven Madden each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

6.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Steven Madden with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

6.5. Public Benefit. It is Steven Madden's understanding that the commitments it has agreed to herein, and actions to be taken by Steven Madden under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Steven Madden that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Steven Madden's failure to provide a warning concerning exposure to BPA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Steven Madden is in material compliance with this Settlement Agreement.

7. 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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Steven Madden shall provide written notice to Bell of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

9. NOTICES

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

For Steven Madden:

General Counsel
Steven Madden, Ltd.
52-16 Barnett Avenue
Long Island City, NY 11104

Copy to:

Amy P. Lally
Sidley Austin LLP
1999 Avenue of the Stars, 17th Fl.
Los Angeles, CA 90067

For Bell:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either 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.

10. COUNTERPARTS: 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

12. MODIFICATION

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

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

Date: 10 / 21 / 24

By: 
Ema Bell

AGREED TO:

Date: 10/21/2024

By: 
3D80EFF445EF496
Steven Madden, Ltd.

AGREED TO:

Date: 10/21/2024

By: 
3D80EFF445EF496
Steven Madden Retail, Inc.