

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement and Release is entered into by and between: Michael DiPirro (referred to herein as “DiPirro”) represented by his attorneys, Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law, and Yamaha Corporation of America (referred to herein as “Noticed Party”) represented by its attorneys, Greenberg Traurig LLP. DiPirro 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. Noticed Party 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

DiPirro alleges that the Noticed Party manufactures, imports, sells, or distributes for sale, in the State of California products containing Diethylhexyl phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and birth defects or other reproductive harm (hereinafter the “Listed Chemical”). The Noticed Party denies all allegations that the products contain DEHP and/or require a Proposition 65 warning.

1.3 Product Description

The products covered by this Settlement Agreement are Brass Instrument Guards containing the Listed Chemical that are manufactured, sold, or distributed for sale to consumers in the State of California by the Noticed Party, including, but not limited to, the: Yamaha Accessories Trumpet Valve Guard Vinyl (the “Covered Products”).

1.4 Notice of Violation

On or about January 24, 2024, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of DiPirro’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Covered Products expose users to the Listed Chemical. To the best of DiPirro’s knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning the Noticed Party’s compliance with Proposition 65. Noticed Party explicitly denies all material, factual, and legal allegations contained in the Notice and maintains that all of the products it manufactured, sold, or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all applicable laws and regulation, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by the Noticed Party 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 by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, all of which are specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’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 thirty (30) days following the execution of this Settlement Agreement by the parties.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings.

As of the Effective Date, for any of the Covered Products that contain more than 0.1 percent (1,000 parts per million) of the Listed Chemical (which Noticed Party will determine through its own independent testing using a laboratory accredited by the State of California), Noticed Party

shall provide a clear and reasonable warning on the label of each Covered Product as set forth in Section 2.2. Each 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.

2.2 Internet Warnings.

If the Noticed Party sells Covered Products to customers located in California via an internet website it controls, the warning requirements of this Section 2 shall be satisfied if the foregoing warning appears on one or more web pages on which the Covered Product is displayed to a purchaser prior to or during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.3.

2.3 Warning Content.

The Noticed Party shall use one of either of the following warning statements, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Covered Product’s packaging):



WARNING: This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is 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.

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

2.4 Changes in Warning Regulations or Statutes. In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, the Noticed Party shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. Likewise, the Noticed Party shall amend the warning to comply with the regulation if additional requirements or changes are promulgated by OEHHA.

2.5 Grace Period for Existing Inventory of Covered Products. The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date or that the Noticed Party places into the stream of commerce within sixty (60) days prior to the Effective Date. Covered Products that were supplied to third parties by the Noticed Party prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold as previously manufactured, packaged, and labeled. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture. Additionally, the injunctive requirements of Section 2 shall not apply to Covered Products that are distributed or sold outside of the State of California. Nothing in this Settlement Agreement is intended to apply to any of the Noticed Party’s products other than the Covered Products sold in California, manufactured for sale in California, or “distributed for sale in California.”

2.6 The parties agree and intend for compliance with the terms of this Section 2 to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Covered Products. The requirements for warnings, set forth above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. The Parties agree that the Noticed Party’s releases (as defined herein) shall be deemed to be in compliance with Proposition 65 and this Agreement as it relates to Covered Products by adhering to this Section 2 or by complying with warning requirements set forth under California Health & Safety Code § 25249.5, et seq. and/or

adopted by OEHHA applicable to the Covered Products and the exposure at issue that are in effect after the Effective Date.

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

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). In settlement of the claims covered in this Settlement Agreement, the Noticed Party shall make a civil penalty payment of \$1,250. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro. DiPirro’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

4.1 In addition to the Penalties in Section 3, the parties agreed on the compensation due to DiPirro and his 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. The Noticed Party shall pay a total of \$ 44,000 for fees and costs incurred as a result of investigating, working with toxicology experts, bringing this matter to the Noticed Party’s attention, document preparation, and negotiating a settlement in the public interest.

5. PAYMENT AND FORM 1099

5.1 Payment. The complete settlement payment in the amount of \$45,250 shall be delivered within thirty (30) days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment number provided prior to its due date) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a check made payable to: “Jeremy Fietz, Attorney at Law.” DiPirro’s counsel shall provide the Noticed Party with all necessary information and documentation to effectuate payment, no later than fifteen (15) days prior to its due date. Any delay or failure to provide such information shall excuse the Noticed Party from payment for the duration of time such information is withheld.

5.2 Issuance of 1099 Form.

The Noticed Party shall provide DiPirro's counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the Form 1099 MISC with the amount reported in box 10 ("Gross proceeds paid to an attorney"). The Noticed Party acknowledges that 1099 shall NOT be issued under form 1099 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties to this agreement, and no later than fifteen (15) days prior to the date the payment in this Section 5 is due.

6. CLAIMS COVERED AND RELEASED

6.1 DiPirro's Release of Noticed and Related Parties

This Settlement Agreement is a full, final and binding resolution of all claims between DiPirro, and the Noticed Party, regarding Proposition 65 that was or could have been asserted by DiPirro or on his behalf by his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to DEHP from use of the Covered Products, and Releasers hereby release any such claims against the Noticed Party and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors, assignees, licensors and each entity to whom the Noticed Party directly or indirectly obtains or distributes or sells the Covered Products, including but not limited to, upstream manufacturers, suppliers and downstream distributors, wholesalers, customers, retailers, including but not limited to Amazon, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on exposure to DEHP from use of the Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §5, above, DiPirro, on behalf of himself, his 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 he 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 Proposition 65 from DEHP from use of the Covered Products, except this paragraph shall not apply to actions for breach of the terms of this Settlement Agreement.

This release applies to all demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Noticed Party and the Releasees. DiPirro acknowledges that he is familiar with California Civil Code section 1542, 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.

DiPirro, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all benefits which he may have under, or which may be conferred on him 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 he may lawfully waive such rights or benefits pertaining to the released matters. arising under Proposition 65 for exposures to the Listed Chemical from Covered Products distributed, sold, or distributed for sale in California by the Noticed Party prior to the Effective Date.

6.2 Noticed Party's Release of DiPirro

Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his 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 Covered Products.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then the Noticed Party may provide written notice to DiPirro 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, the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Noticed Party from any obligation to comply with any other applicable state or federal toxics control laws.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to 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 on any party by the other party at the following addresses:

For Yamaha Corporation of America:

Hazel Ocampo
Greenberg Traurig LLP
12760 High Bluff Drive, Suite 240
San Diego, CA, 92130

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

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

10. 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.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. FORCE MAJEURE

The inability of Noticed Party to comply with any deadline set forth in this Settlement Agreement due to an act of terrorism, fire, earthquake, civil disorders, war, or act of God that is beyond the reasonable control of Noticed Party shall be grounds to modify the deadlines set forth in this Settlement Agreement.

13. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

14. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the parties to this agreement.

15. AUTHORIZATION

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

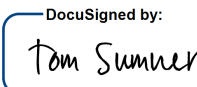
AGREED TO:

AGREED

TO: Date: July 25, 2024

Date: 8/9/2024

By: 
Michael DiPirro

By: 
2FAC053172684EE...
Yamaha Corporation of America
Print Name: Thomas L. Sumner
Title: President