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STATE OF CALIFORNIA
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

**Speedo USA Inc., formerly
Warnaco Swimwear, Inc., and PVH Corp.
RESPONDENTS**

**STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE
IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE
PENALTIES**

**PUBLIC RESOURCES CODE
SECTION 42300, ET SEQ.**

**OAH NO: 2020080273
AGENCY NO: 2020-001-RPPC**

INTRODUCTION AND PROCEDURAL HISTORY

This STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES (hereinafter "Stipulation") is entered into by, first, California Department of Resources Recycling and Recovery ("CALRECYCLE"), next, PVH Corp., the former parent company and former owner of the final party, Warnaco Swimwear, Inc. ("Warnaco"), now named Speedo USA Inc. (hereinafter "Speedo")

(collectively, “RESPONDENTS” or the “Parties”). On February 4, 2020, CALRECYCLE issued an accusation (the “Accusation”) against Warnaco seeking penalties in the amount of sixty-six thousand dollars (\$66,000) for violations of Public Resources Code (PRC) sections 42300 through 42345 and Title 14 of the California Code of Regulations (CCR) sections 17943 through 17949, for calendar year 2017, for: failing to submit a complete compliance certification by the April 1, 2018 due date in violation of CCR section 17945.2(c), failing to submit a complete or accurate compliance certification in violation of CCR section 17945.3, and failing to demonstrate that its products met any of the compliance options under the law, in violation of CCR sections 17944(a) and 17945.2. This Stipulation resolves all issues raised in that matter, in exchange for a payment of forty-six thousand dollars (\$46,000) payable by PVH Corp. and Penalty in Abeyance of twenty-thousand dollars (\$20,000) payable by Speedo and Speedo agreeing to recertify during the 2022 Compliance Certification Measurement Period, as described below.

STIPULATED STATUTORY AND REGULATORY AUTHORITY

1. PRC section 42300 et seq. and CCR section 17943 et seq. provides the supporting authority for this Stipulation.
2. PRC section 42301 and CCR section 17943 provide definitions that directly apply to the implementation and enforcement of the law. Key definitions used within this accusation include the following:
 - a. PRC section § 42301(e), states a “Manufacturer” is defined as, “the producer or generator of a product that is sold or offered for sale in the state and that is stored inside of a rigid plastic packaging container.”
 - b. CCR section 17943(k) states a “Measurement Period” “means the calendar year for which compliance is being determined as part of

the certification or auditing process described in sections 17945.1, 17945.2, 17945.3, 17945.5, 17947, and 17948.1 of this Article. For products introduced for sale in California after January 1 of a measurement period, their first measurement period shall be the remainder of that calendar year.”

- c. PRC section 42301(g), states “‘Postconsumer material’ means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product lifecycle. Postconsumer material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.”
 - d. PRC section 42301(f), states a “Rigid plastic packaging container” is defined as, “any plastic package having a relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles, for sale or distribution in the state.”
 - e. CCR section 17943(ae) states “Sold or Offered for Sale” “means direct sales, retail sales, and remote sales such as through distributors, wholesalers and the internet.”
3. PRC section 42310, states that “[e]xcept as otherwise provided in this chapter, every rigid plastic packaging container sold or offered for sale in this state shall, on average, meet one of the following criteria:
 - (a) Be made from 25 percent postconsumer material.
 - (b) Have a recycling rate of 45 percent if it is a product-associated rigid plastic packaging container or a single resin type of rigid plastic packaging container, as demonstrated to the board by the product

maker, container manufacturer, or other entity. The board may take appropriate action to verify the demonstration, but the board is not required to expend state funds to conduct a survey or calculate the rate.

(c) Be a reusable package or a refillable package.

(d) Be a source reduced container.

(e) Is a container containing floral preservative that is subsequently reused by the floral industry for at least two years.”

4. Additionally, PRC section 42310.3 provides manufacturers an alternative compliance option. A manufacturer can demonstrate compliance if the manufacturer consumed postconsumer material generated in the state in the manufacture of a RPPC or other plastic products or plastic packaging. This criteria and requirements for meeting this alternative compliance option are outlined in the RPPC regulations (CCR section 17945.3(e)).
5. Pursuant to PRC section 42325, CALRECYCLE has authority to adopt regulations which include but are not limited to procedures for product manufacturers to certify compliance. The regulations require a submittal of a compliance certification. Within the certification, the product manufacturer claims that the RPPCs holding their products meet one of the compliance criteria, identified above, or meet the alternative compliance option, and reports specific container data and supporting information for the compliance option claimed.
6. CCR section 17945.2 requires the following during compliance certification;
 - “(a) Product manufacturers, upon written notification from [CALRECYCLE], are required to certify to [CALRECYCLE] that all of the rigid plastic packaging containers holding their products sold or offered for sale in California comply with the rigid plastic packaging container requirements, pursuant to Public Resources

Code Section 42310 or 42310.3. Product manufacturers shall submit the information described in Section 17945.3 in their certifications.

(b) Container manufacturers' certifications provided to product manufacturers shall include the information described in Section 17945.4.

(c) A product manufacturer's completed certification, including any applicable container manufacturer certifications, must be postmarked or sent electronically no later than April 1 of the calendar year immediately following the measurement period.

(d) Prior to the end of the measurement period, a product manufacturer may request an extension for submittal of its certification of up to 30 calendar days for cause. An extension may be granted by [CALRECYCLE] only if the product manufacturer provides documentary evidence to justify an extension based on criteria such as corporate acquisitions, corporate reorganizations, difficulty obtaining container information, or catastrophic acts of God, or other criteria deemed acceptable upon [CALRECYCLE's] evaluation.

(e) If [CALRECYCLE] receives a certification that, upon review, does not include all of the information required by this Article, [CALRECYCLE] will notify the product manufacturer and state what additional information or documentation is required. The product manufacturer will then have 30 calendar days after receipt of the notice to provide the required information or documentation. One 30-calendar day extension may be granted for cause by [CALRECYCLE] upon request.

(f) At any time, [CALRECYCLE] may request information from a product manufacturer outside of any notice of incomplete certification. In such cases, [CALRECYCLE shall mail a written request, and the product manufacturer shall have 60 calendar days following the date of receipt of the request to supply the information.”

7. CCR section 17945.3(a) requires that a product manufacturer include in its certification the information listed in subsections (b) through (d), and if applicable, subsection (e).
 - a. CCR section 17945.3(b) requires information necessary to identify and contact the product manufacturer, a statement regarding whether products were sold in California along with whether products were approved for a waiver or qualified for statutory exemptions, and a requirement that all corporate entities providing certification must identify the individual submitting the certification and be signed under the following statement, “I certify under penalty of perjury under the laws of the State of California that to the best of my knowledge and belief the foregoing information and all supporting data provided is accurate, true and complete.”
 - b. CCR section 17945.3(c) requires the product manufacturer to provide detail about products sold in RPPCs, including specific details regarding the physical characteristics of the packaging containers and sales data.
 - c. In addition to data reporting requirements in this section, CCR section 17945.3(d) requires that manufacturers identify their chosen method of compliance (options previously noted under PRC sections 42310, 42310.3 and CCR sections 17944 and 17944.1) and submit information specific to the container compliance option(s) claimed.

8. CCR section 17945.4(a) requires that container manufacturers provide, to the product manufacturer, information including contact information for the entity that manufactured the packaging in addition to information regarding the type of container (jar, bottle, clamshell, etc.) weight, percentage of postconsumer content, and/or any reduction in the RPPC weight. Subsection (b) requires this information to be submitted under penalty of perjury.
9. CCR section 17945.5(a) requires that a product manufacturer use the compliance option formulas listed in subsections (b) through (f) to calculate its claim of compliance.
10. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and penalties on manufacturers who violate any provision of the RPPC law.
11. CCR section 17949(e) states, "When product manufacturers do not comply with the rigid plastic packaging container requirements in Sections 17945.3 and 17945.5 ... [CALRECYCLE] will calculate penalties using the data from the approved compliance certifications and the following formulas" (penalty formulas as listed in 1 through 5 of CCR section 17949(e)).
12. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE has authority to impose fifty thousand dollars (\$50,000) penalty for each violation; total annual fines and penalties assessed cannot exceed one hundred thousand dollars (\$100,000), on a manufacturer who violates provisions of the RPPC law within a calendar year.

GROUNDINGS FOR ADMINISTRATIVE ACTION

13. Pursuant to PRC section 42322 and CCR section 17949, CALRECYCLE is authorized to impose fines and civil penalties on manufacturers who violate any provision of the RPPC law, up to a maximum of \$100,000.

VIOLATION 1

14. Warnaco did not submit a complete compliance certification by the April 1, 2018 due date in violation of CCR section 17945.2(c).

VIOLATION 2

15. Warnaco did not submit a complete or accurate compliance certification in violation of CCR section 17945.3.
16. The initial submission had unclear product names, lacked a statement of compliance, lacked container data, failed to account for all products, lacked container manufacturer certifications, and lacked compliance calculations.
17. Although Warnaco did submit additional information on or about August 2, 2018 and October 31, 2018, the submissions continued to be incomplete and inaccurate.
18. CALRECYCLE was not able to verify that all products offered for sale by Warnaco in 2017 were reported in the Compliance Certification. For example, RESPONDENTS reported approximately 38 container lines in its initial Compliance Certification submission. On or about August 2, 2018 in response to CALRECYCLE's Notice of Incomplete Compliance Certification, Warnaco submitted documentation for approximately 35 container lines, including some container data. CALRECYCLE found that the submission was still incomplete and requested additional information. RESPONDENTS' final submission, on or about October 31, 2018, included approximately 79 container lines, claiming that the packaging for many of its goggles were incorrectly measured and therefore this certification submittal included a number of additional products and packaging. CALRECYCLE found that 43 additional containers lines were reported by the Warnaco in October 2018 compared to their August 2018 submission (including some products that

CALRECYCLE had identified as missing from the previous certifications).

The inconsistent number of products reported in each submission prevented CALRECYCLE from being able to verify that all products were included in the final submission.

19. CALRECYCLE found inconsistencies between Warnaco's final data and the container manufacturer certification data. For example, CALRECYCLE was not able to find container data for 7 products in the reported associated container manufacturer certification. CALRECYCLE also found inconsistent container weight data between Warnaco's certification and the container manufacturer certification.

VIOLATION 3

20. Warnaco's certification did not demonstrate compliance with the law. Warnaco did not report that they met any of the compliance options (CCR section 17945.3(d)) and RPPCs reported in the self-certification did not meet the container compliance requirements (PRC section 42310(a) through (e), CCR sections 17944(a) and 17945.2).

ALLEGED VIOLATIONS AND BASIS FOR SETTLEMENT

21. Warnaco, owned by the parent company PVH Corp. received proper notice from CALRECYCLE that it had been selected for 2017 Rigid Plastic Packaging Container Compliance Certification.
22. In the Accusation, CALRECYCLE alleges that Warnaco failed to submit a complete compliance certification by the April 1, 2018 due date in violation of CCR section 17945.2(c). In the Accusation, CALRECYCLE also alleges that Warnaco failed to submit a complete or accurate compliance certification in violation of CCR section 17945.3. Finally, the Accusation alleges that

- Warnaco's certification did not demonstrate compliance with the law. CALRECYCLE maintains that Warnaco did not report that it met any of the compliance options (CCR section 17945.3(d)) and RPPCs reported in the self-certification did not meet the container compliance requirements (PRC section 42310(a) through (e), CCR sections 17944(a) and 17945.2) for the 2017 Compliance Certification Measurement Period.
23. On or about April 2020, PVH Corp. sold Warnaco to Pentland Group, Warnaco was renamed Speedo USA Inc. PVH Corp. certifies, as a party to this agreement, that Warnaco is no longer operating.
24. The Parties have agreed to settle the claims in the Accusation on the following terms.

STIPULATED PENALTY AND SETTLEMENT TERMS

25. RESPONDENTS stipulate to an administrative penalty of forty-six thousand dollars (\$46,000) payable by PVH Corp. and Penalty in Abeyance of twenty-thousand dollars (\$20,000) payable by Speedo and for Speedo agreeing to recertify during the 2022 Compliance Certification Measurement Period. Payments shall be satisfied in the following manner:
- (a) All payments shall be made and mailed to Department of Resources Recycling and Recovery (CALRECYCLE), Attention: Fady Mina, Fiscal Services Branch, at 1001 I Street, PO Box 4025, MS 19A, Sacramento, CA 95812-4025, by certified mail. The RESPONDENTS will maintain the receipt as evidence of compliance.
 - i. If any payment from the RESPONDENTS is not mailed to CALRECYCLE by the due date, RESPONDENTS shall be found in full Default.
- Initial Penalty Payment
- (b) PVH Corp. shall make an initial payment for penalties in the amount

of forty-six thousand dollars (\$46,000) to CALRECYCLE within thirty (30) calendar days of execution of this Stipulation. Upon compliance with this paragraph, Respondent PVH Corp.'s duties under this Agreement will be satisfied in full.

(c) If PVH Corp. fails to pay the forty-six thousand dollars (\$46,000) due within thirty (30) calendar days of the execution of this Stipulation, CALRECYCLE will follow the Default procedures described below.

(i) If PVH does not make its payment within thirty (30) days, PVH Corp. will exclusively be held in default and assumes liability for all monetary penalties including the abeyance amount of twenty thousand dollars (\$20,000) under this Stipulation, immediately due as described above; Speedo would then only be obligated for the Pre-Certification and Compliance Certification elements of this stipulation. CALRECYLCE will receive payment of the full amount of the penalty, of sixty-six thousand dollars (\$66,000), described in the Accusation and Stipulation, from PVH Corp..

2021 Pre-Certification and 2022 Compliance Certification

(d) Speedo agrees to re-certify and acknowledges notification that it must participate in the 2021 Pre-Certification. Speedo shall comply with Pre-Certification Requirements as set forth in CCR section 17945.1.

(e) Speedo agrees to participate in the subsequent 2022 Compliance Certification. Upon notification by CALRECYCLE, Speedo shall follow CALRECYCLE's instructions regarding submittal of the Rigid Plastic Packaging Container 2022 Compliance Certification, as set forth in PRC section 42300 et seq. and CCR section 17945.2 et seq, and demonstrate that Speedo is in full compliance with the RPPC law, to the satisfaction of CALRECYCLE for the specific Measurement Period. Failure to demonstrate compliance with the requirements in the

program's statutes and regulations will result in Default and payment of the Penalty in Abeyance, as described in the following subsection of this agreement.

Penalty in Abeyance

(f) Speedo agrees to be liable for twenty thousand dollars (\$20,000) of the sixty-six thousand dollars (\$66,000.00) penalty, which shall be stayed and held in abeyance until Speedo demonstrates compliance in the 2022 Compliance Certification;

(i) If Speedo fails to submit a 2022 Compliance Certification, or if the Compliance Certification does not demonstrate compliance, a finding of non-compliance following the Default procedures will result, as described below, and CALRECYCLE will demand payment of all of the penalty held in abeyance.

(ii) If Speedo fails to respond to the CALRECYCLE's requests for information or clarification regarding this Stipulation, their Pre-Certification or Certification., or fails to notify CALRECYCLE regarding changes to contact information, CALRECYCLE may issue a finding of Default, and CALRECYCLE may demand payment of some, or all, of the Penalty in Abeyance.

(iii) Otherwise, the stayed penalty held in abeyance shall be deemed terminated on January 1, 2025 and shall not be paid by Speedo to CALRECYCLE unless CALRECYCLE previously issued a Notice of Default as described below.

(g) Speedo is designating a Speedo employee, Alistair Kilgour, General Counsel, Speedo USA, (657)-465-3800, 6251 Katella Ave, Cypress, CA 90630, alistair.kilgour@pentland.com, to be the single point of contact for CALRECYCLE through January 1, 2025. The point of contact shall be responsible for all communications with CALRECYCLE in regard to

implementing the RPPC law, including but not limited to technical assistance, pre-certification notifications and responses, compliance certification, and discussion and questions regarding what qualifies as an RPPC. The point of contact shall respond to CALRECYCLE's requests for information in compliance with this Stipulation, their Pre-Certification or Certification and the RPPC law within fifteen (15) business days of any request for information or clarification by CALRECYCLE. If the above point of contact or that individual's information changes, the Speedo shall notify CALRECYCLE within twenty (20) business days of the change.

26. With respect to any Notice of Default regarding Speedo's failure to maintain an accurate single point of contact, Speedo shall have twenty (20) business days from the date of the issuance of the Notice of Default to cure that default, by providing that information to the Department via certified mail communication.

Default

27. If CALRECYCLE believes that the RESPONDENTS have defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to the Parties in this stipulation; said Notice of Default shall state the paragraphs or provisions of the Stipulation of which the Parties are in default.

28. After issuing a Notice of Default and reviewing any evidence or information provided by RESPONDENTS, CALRECYCLE shall issue a Supplemental Decision with its determination as to whether there has been a Default by either PVH Corp. or Speedo, and if so, the penalty which is due.

29. If Speedo fails to demonstrate compliance in the 2022 Compliance Certification Measurement Period, or CALRECYCLE finds violations of PRC section 42300 et seq. or CCR section 17945.2 et seq. that occurred

during Compliance Certification, in addition to finding Speedo in Default as described above, in connection with 2017 Compliance Certification Period violations, CALRECYCLE has the authority to pursue a separate enforcement action against Speedo, seeking additional penalties for violations with the RPPC law occurring in the 2022 Compliance Certification Period, or any future Compliance Certification Period, following the process described in statute and regulations, not limited in any manner by this Stipulation.

Dated January 26, 2021

original signed by:

MARK de BIE

Deputy Director, WPCMD

Department of Resources Recycling and
Recovery (CALRECYCLE)

and

Mark D. Fischer

General Counsel

PVH Corp.

Dated January 25, 2021

and

Alistair Kilgour

General Counsel

Speedo USA Inc.

Dated January 25, 2021