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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**

**ADMINISTRATIVE DECISION FOR RIGID PLASTIC PACKAGING CONTAINER  
PENALTIES**

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

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

The California Department of Resources Recycling and Recovery (“CALRECYCLE”), formerly the California Integrated Waste Management Board (“Board”), is filing this Decision to seek penalties in the amount of sixty-six thousand dollars (\$66,000) from PVH Corp., the former parent company and former owner of the final party, Warnaco Swimwear, Inc. (“Warnaco”), now named Speedo USA Inc. (hereinafter “Speedo”); of that amount, an immediate penalty 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 should they fail to demonstrate full compliance with the law in the Rigid Plastic Packaging Container (RPPC) 2022

Compliance Certification, any remainder to be forgiven on January 1, 2025, absent a default as described below. CALRECYCLE succeeded to the Board's authority on January 1, 2010, pursuant to Public Resources Code ("PRC") section 40401(a)(1). CALRECYCLE is authorized to enforce the California Rigid Plastic Packaging Container ("RPPC") law, PRC section 42300 et seq. and the California Code of Regulations ("CCR"), Chapter 4 of Division 7 of Title 14, section 17943 et seq.

### **PROCEDURAL HISTORY**

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. On or about April 2020, PVH Corp. sold Warnaco to Pentland Group; Warnaco was renamed Speedo USA Inc. On or about January 26, 2021, all parties in this matter signed a STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES. The Stipulation resolved the 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.

## **FACTUAL FINDINGS**

1. During the relevant Compliance Certification measurement period, from calendar year January 1, 2017 through December 31, 2017, Warnaco was a product manufacturer who was selling products packaged within RPPCs in California.
2. Warnaco was notified on or about January 25, 2016, through a precertification notification, that it should evaluate the RPPCs used to verify compliance, as it might be selected to certify compliance for products it sold in 2017.
3. Warnaco was notified on or about March 29, 2017, that it had been selected to demonstrate compliance regarding products it sold in 2017, and that the 2017 Compliance Certification was due to CALRECYCLE by April 1, 2018.
4. Warnaco did not submit the 2017 Compliance Certification by the April 1, 2018 due date, in violation of section 17945.2(c).
5. Warnaco submitted an incomplete 2017 Compliance Certification, via email, on April 30, 2018. Staff reviewed the submittal and found it to be incomplete in violation of CCR section 17945.2(e). Specifically, the submission failed to include the following:
  - a. A statement of compliance
  - b. Clear product names
  - c. Identification of chosen compliance option(s)
  - d. Completed compliance option calculation
  - e. Container Manufacturer Certifications and/or
  - f. Data to support compliance for its RPPCs
  - g. Products sold in RPPCs that were previously identified as sold by Respondent during the compliance measurement period.
6. After requesting and receiving additional guidance from CALRECYCLE, Warnaco provided corrections and additional documentation in amended

2017 Compliance Certification submittals on August 2, 2018 and October 31, 2018.

7. At no time did Warnaco select a compliance option under CCR section 17945.3(d) or demonstrate via the compliance formulas (CCR section 17945.5) their chosen compliance option.
8. Staff also identified inconsistent container weight data when comparing Warnaco's certification and the Container Manufacturer Certification data provided by Warnaco from its packaging suppliers.

### **ORDER**

Pursuant to Public Resources Code section 42322 and Government Code section 11520, THE FOLLOWING ORDER is hereby made:

9. RESPONDENTS are subject to administrative penalties as described in the STIPULATION FOR THE ISSUANCE OF ADMINISTRATIVE DECISION FOR THE IMPOSITION OF RIGID PLASTIC PACKAGING CONTAINER ADMINISTRATIVE PENALTIES in favor of CALRECYCLE in the sum of \$66,000.00 for the violations set forth in the Stipulation. Respondents' liabilities and payments are as described below:

#### **Initial Penalty Payment**

(b) PVH Corp. shall make a payment for penalties in the amount of forty-six thousand dollars (\$46,000) to CALRECYCLE within thirty (30) calendar days of execution of the 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 the 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 the Stipulation, immediately due as described above; Speedo would then only be obligated for the Pre-Certification and Compliance Certification elements of the 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, as well as any penalties allowed by law.

(1) If Speedo fails to demonstrate compliance in the 2022 Compliance Certification Measurement Period, or if 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 the Stipulation.

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, as well as any penalties allowed by law.

(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, as well as any penalties allowed by law as described under section (e)(1) above.

(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, Speedo shall notify CALRECYCLE within twenty (20) business days of the change.

10. 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 CALRECYCLE via certified mail communication or by emailing RPPC@calrecycle.ca.gov.

Default

11. If CALRECYCLE believes that any Party has defaulted under any of the terms of this Stipulation, CALRECYCLE shall send a Notice of Default to that Party; said Notice of Default shall state the paragraphs or provisions of the Stipulation in default.

12. 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.

Dated: May 25, 2021

Original signed by:

MARK de BIE

Deputy Director

Waste Permitting, Compliance and Mitigation Division

Department of Resources Recycling and Recovery (CalRecycle)