

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Rust-Oleum Corporation (“Rust-Oleum”), with Held and Rust-Oleum each respectively referred to as a “Party” and collectively as the “Parties.” Held 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. Rust-Oleum 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. Held alleges that Rust-Oleum manufactures, imports, sells, or distributes for sale in the state of California, tools with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable health hazard 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 birth defects and other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are tools with vinyl/PVC grips or other components containing DEHP that are manufactured, sold, or distributed for sale in California by Rust-Oleum, including, but not limited to, the *Testors Sprue Cutter, #8940T (UPC No. 0 75611 89400 3)* (collectively, “Products”).

1.4 Notice of Violation. On July 24, 2013, Held served RPM International Inc. (“RPM”), the holding company of Rust-Oleum, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that RPM violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission. Rust-Oleum denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or

distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Rust-Oleum 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 Rust-Oleum of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Rust-Oleum. This section shall not, however, diminish or otherwise affect Rust-Oleum'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 date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products. Commencing on the Effective Date, and continuing thereafter, to the extent it has not done so already, Rust-Oleum shall only manufacture, ship, sell, or distribute for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Rust-Oleum shall pay \$10,500 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Held.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Rust-Oleum shall make an initial civil penalty payment of \$3,500. Rust-Oleum shall provide its payment in

two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "The Chanler Group in Trust for Anthony E. Held" in the amount of \$875.

The initial civil penalty payments are to be delivered to Held and OEHHA at the addresses provided in section 3.3.

3.1.2 Final Civil Penalty. On or before June 1, 2014, Rust-Oleum will make a final civil penalty payment of \$7,000. Pursuant to title 11 California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than May 1, 2014, an officer of Rust-Oleum certifies in writing to Held's counsel that, as of such date, one-hundred percent (100%) of the Products Rust-Oleum manufactures for sale or purchases for sale in California are Reformulated Products as defined by Section 2.1, and that Rust-Oleum will continue to only offer Reformulated Products in California in the future. The option to certify timely reformulation in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence. Unless waived, final civil penalty payments to Held and OEHHA shall be delivered to the addresses provided in section 3.3.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Rust-Oleum shall pay \$33,500 for all fees and costs incurred investigating, bringing this matter to the attention of Rust-Oleum's management, and negotiating a settlement in the public interest.

3.3 Payment Procedures. Except for the final civil penalty provided in Section 3.1.2, all payments under this Settlement Agreement are due within five days of the Effective Date and shall be delivered according to the following subsections.

3.3.1 Payment Address for Held and His Counsel. All payments and tax documentation required for Held and his counsel under this Settlement Agreement shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

3.3.2 Payment Addresses for OEHHA. All payments and tax documentation required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) to one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Rust-Oleum agrees to provide Held’s counsel with a copy of the checks to OEHHA enclosed with its settlement payments to Held, and delivered to address provided in Section 3.3.1.

3.3.4 Tax Documentation. For the payments made under this Settlement Agreement, Rust-Oleum agrees to provide a completed IRS 1099 form for each of the following payees:

- (a) “Anthony E. Held” whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) “The Chanler Group” (EIN: 94-3171522) at the address provided in section 3.3.1; and

(c) “Office of Environmental Health Hazard Assessment” (EIN: 68-0284486),
1001 I Street, Sacramento, CA 95814.

4. **CLAIMS COVERED AND RELEASED**

4.1 Held’s Release of Rust-Oleum. This Settlement Agreement is a full, final, and binding resolution between Held and Rust-Oleum of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Rust-Oleum, its parents, subsidiaries, affiliated entities under common ownership (including but not limited to Testors), suppliers, directors, officers, employees, attorneys, and each entity to whom Rust-Oleum directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP from Products manufactured, sold or distributed for sale in California by Rust-Oleum prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of his 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 that he may have against Rust-Oleum and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold, or distributed for sale in California by Rust-Oleum prior to the Effective Date.

4.2 Rust-Oleum’s Release of Held. Rust-Oleum, 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 Held 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 Held 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 Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Rust-Oleum may request in writing that Held draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Held and Rust-Oleum agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Rust-Oleum agrees to reimburse Held and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Held's counsel for work performed under this section, Rust-Oleum will remit payment to the address provided in section 3.3.

6. 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 enforceable 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Rust-Oleum may provide written notice to Held of any asserted change in the law, and have no further

obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICE

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 at the following addresses:

For Rust-Oleum Corporation:

Michael T. Murphy, Esquire
Rust-Oleum Corporation
11 Hawthorn Parkway
Vernon Hills, IL 60061

With a copy to:

Lisa Burchi, Esq.
Bergeson & Campbell, P.C.
2200 Pennsylvania Ave, N.W. Suite 100W
Washington, D.C. 20037

For Held:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

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. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

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

12. AUTHORIZATION

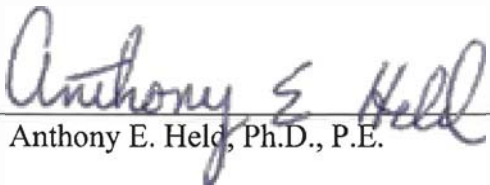
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: May 1, 2014

Date: MAY 1, 2014

By: 
Anthony E. Held, Ph.D., P.E.

By: 
Michael T. Murphy, Esquire
Rust-Oleum Corporation