

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Vogue Industries Limited Partnership and Safety Flag Co. of America, A Division of Vogue Industries, (collectively “Vogue”) and Anthony E. Held, Ph.D., P.E. (“Held”), with Vogue and Held each referred to individually 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 improve human health by reducing or eliminating hazardous substances contained in consumer products. Vogue 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, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Vogue has manufactured, imported, distributed, sold and/or offered for sale in the State of California, safety vests with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as safety vests with vinyl/PVC components including, but not limited to, *C.H. Hanson Lime Green with Red Reflective Stripes Safety Vest, #55115, UPC #0 81834 55115 9*, manufactured, imported, distributed and/or sold by Vogue for sale to consumers in the State of California, hereinafter “Products.”

1.4 Notices of Violation

Initially, on November 25, 2014, Held served The C.H. Hanson Company and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that The C.H. Hanson Company was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that its Products exposed users in the State of California to DEHP.

Subsequently, on February 27, 2015, Held served The C.H. Hanson Company, Vogue and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice that The C.H. Hanson Company and Vogue were in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that their Products exposed users in the State of California to DEHP.

The Notice and Supplemental Notice are collectively referred to herein as the “Notices.” No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Vogue denies the material, factual, and legal allegations contained in the Notices, and maintains that all of the products that it has sold 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 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 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Vogue. This section shall not, however, diminish or otherwise affect Vogue’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 the date the Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING

On or before the Effective Date, Products manufactured, imported, distributed, or shipped for sale in California or sold in California shall be: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.1; or (2) exempt pursuant to Section 2.2 as Reformulated Products as defined in Section 2.3. On or before 90 days after the Effective Date, Products manufactured, imported, distributed, or shipped for sale in California or sold in California shall be sold or shipped with the clear and reasonable warning set forth in subsection 2.1(B).

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2.1 Product Warnings

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. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product(s) the warning applies, so as to minimize the risk of consumer confusion. Vogue shall affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in California that states:

(A) **WARNING:** This product contains one or more chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

or

(B) **WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”) and Diisononyl phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP, DBP, BBP and/or DINP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Vogue by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Vogue under laws other than Proposition 65.

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3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Vogue shall pay within ten (10) days of the Effective Date a total of \$10,500 in civil penalties in accordance with this Section. Held will allocate each penalty payment in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Held. Vogue shall make the civil penalty payment with a check made payable to “Anthony Held, Client Trust Account.” All penalty payments shall be delivered to the addresses listed in Section 3.3 below. The amount of this civil penalty takes into account Vogue’s representation that the product warnings mandated by Section 2.1 above had been placed on all Products prior to Vogue’s receipt of Held’s Supplemental Notice.

3.2 Reimbursement of Held’s Fees and Costs

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Vogue expressed a desire to resolve the fee and costs issue. The Parties then attempted to (and did) reach an accord on the compensation due Held 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 in this matter exclusive of fees and costs incurred on appeal, if any. Under these legal principles, Vogue shall pay \$30,000 for fees and costs incurred investigating and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and reporting this Settlement Agreement in the public interest.

3.3 Payment Procedures

All payments owed to Plaintiff and his counsel, pursuant to Sections 3.1 and 3.2 shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Proposition 65 Claims

Held, in his individual capacity only and *not* on behalf of the public, releases Vogue and each entity to whom Vogue directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors including The C.H. Hanson Company, wholesalers, customers, franchisees, cooperative members, licensees and retailers including Ace Hardware ("Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposures to DEHP from the Products as set forth in the Notices. Held, as an individual and *not* on behalf of the public, considers compliance with the terms of this Settlement Agreement to constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products sold by Vogue before the Effective Date as set forth in the Notices.

Held, in his individual capacity only and *not* in his representative capacity, also provides a release herein as to Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products imported, manufactured, sold or distributed for sale by Vogue before the Effective Date.

4.2 Vogue's Release of Held

Vogue on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held, 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. 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 if any of the provisions of this

Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Vogue shall provide written notice to Held 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 Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Vogue from any obligation to comply with any pertinent state or federal toxics control law.

6. NOTICES

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

For Vogue:

Norman Bernson, President
Vogue Industries Limited Partnership
82 Hadwin Street
Central Falls, RI 02863

For Held:

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

With a copy on behalf of Vogue to:

M. Taylor Florence, Partner
Locke Lord LLP
500 Capitol Mall, Suite 1800
Sacramento, California 95814

Any 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.

7. COUNTERPARTS; FACSIMILE OR PDF 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.

8. 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 any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise,

express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

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

10. **MODIFICATION**

This Settlement Agreement may be modified only by: (i) a written agreement of the Parties and upon entry of a modified Settlement Agreement by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified Settlement Agreement by the Court.

11. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: 8/26/15 _____

Date: 8/27/2015 _____

By: Anthony E. Held
Anthony Held

By: Norman Bernson
Norman Bernson, President
Vogue Industries Limited Partnership