

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 CMC Group, Inc. (“CMC”), with Held and CMC each individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Held alleges that CMC 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 CMC manufactures, sells, and/or distributes for sale in California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Held alleges that CMC failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its vinyl/PVC gloves.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC gloves containing DINP including, but not limited to, the *DayMark Safety Systems Refill 4 (Medical Exam Gloves)*, UPC #0 83491 34127 2 manufactured, sold or distributed for sale in California by CMC (“Products”).

1.4 Notice of Violation

On or about April 24, 2015, Held served CMC and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), which alleges that CMC violated Proposition 65 when it failed to warn its customers and consumers in

California that its Products expose users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and/or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

CMC denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has manufactured, distributed, sold, and/or offered for sale 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 by CMC of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CMC of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CMC. However, this Section shall not diminish or otherwise affect CMC'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 October 9, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Products

For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing a maximum concentration of 0.1 percent (1,000 parts per million) of DINP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DINP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, all Products manufactured, distributed, sold and/or offered for sale in the State of California by CMC shall be Products that either qualify as

Reformulated Products as defined in Section 2.1 above, or shall carry clear and reasonable Proposition 65 warnings as specified in Section 2.3 below.

2.3 Product Warnings

As of the Effective Date, CMC shall provide clear and reasonable warnings as set forth in this Section 2.3 for all Products that do not qualify as Reformulated Products. 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 the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. CMC shall affix a warning to the packaging, labeling, or directly on each Product that CMC offers for sale or sells in retail outlets in California that states:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

(ii) Point-of-Sale Warnings. Alternatively, CMC may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to CMC's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement must be used:¹

WARNING: The following products contain DINP, a phthalate chemical known to the State of California to cause cancer:

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that CMC sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, CMC shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, CMC may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DINP, a phthalate chemical known to the State of California to cause cancer.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, CMC must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) Internet Website Warning. A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain DINP, a phthalate chemical known to the State of California to cause cancer.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, CMC agrees to pay \$12,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held. Held and his counsel will deliver the appropriate 75% portion of all civil penalties paid to OEHHA.

3.1.1 Initial Civil Penalty. Within ten (10) days after the Effective Date, CMC shall pay an initial civil penalty made payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$2,750. CMC shall mail the check to the address specified in Section 3.3 and Held and his counsel shall be responsible for delivering to OEHHA 75% of the amount set forth above in this Section 3.1.1.

3.1.2 Final Civil Penalty. On or before January 30, 2016, subject to the waiver provision set forth below in this Section 3.1.2, CMC shall pay a final civil penalty in the amount of \$9,750. The final civil penalty shall be waived in its entirety, however, if, no later than January 15, 2016, an officer of CMC provides Held’s counsel with written certification that, as of the date of the certification and continuing into the future, all Products manufactured, distributed, sold and/or offered for sale in California, by or on behalf of CMC, are Reformulated Products, and that they will continue to provide only Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of a final civil penalty payment required by this Section is a material term, and time is of the essence. CMC shall deliver its written certification, if any, to Held’s counsel at the address provided in Section 3.3, below. In the event a final civil penalty payment is required, CMC shall issue a check in the amount of \$9,750 made

payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in accordance with Section 3.3. In such event, Held and his counsel shall be responsible for delivering to OEHHA 75% of the amount set forth above in this Section 3.1.2.

3.2 Attorneys’ Fees and Costs

The parties acknowledge that Held and his counsel offered to reach terms on the non-monetary elements of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee reimbursement issue to be resolved after the material terms of the agreement had been agreed to in principle. The parties then agreed to resolve the fee and cost reimbursement issue shortly after the other settlement terms had been finalized, subject to agreement on fees and costs. The parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, CMC agrees to pay \$21,400 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of CMC’s management, and negotiating a settlement in the public interest. CMC’s payment shall be due within ten (10) days after the Effective Date, and delivered to the address in Section 3.3 in the form of a check made payable to “The Chanler Group.”

3.3 Payment Address

All payments owed to OEHHA, Held and his counsel as required by 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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of CMC

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public, and CMC, 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/or assignees (“Releasers”), and Releasers hereby release any such claims, against CMC, its parents, subsidiaries, affiliated entities under common ownership (including, without limitation, Century Marketing Corporation and CMC DayMark Corporation), directors, officers, employees, attorneys, and each entity to whom CMC directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the failure to warn about alleged exposures to DINP contained in Products manufactured, distributed, sold or offered for sale by CMC in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or 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 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DINP contained in Products manufactured, distributed, sold and/or offered for sale by CMC before the Effective Date.

4.2 CMC's Release of Held

CMC, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims 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.

4.3 Deemed Compliance with Proposition 65

Compliance by CMC with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP from the Products.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by CMC under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is CMC's intent by entering into this Agreement that to the extent any other private party initiates an action against CMC alleging a violation of Proposition 65 with respect to failure to provide a warning concerning exposure to DINP from Products manufactured, distributed, sold or offered for sale by CMC in California, and subject to CMC's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products addressed under this Agreement.

5. REPRESENTATION REGARDING SALES

CMC represents that the sales information it provided to Held is truthful to its knowledge and acknowledges it is a material factor upon which Held relied to determine

the amount of civil penalties assessed under this Settlement Agreement in accordance with California Health & Safety Code section 25249.7(b).

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of this Settlement Agreement being contrary to, the intent of the Parties.

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 otherwise rendered inapplicable or limited by reason of law generally, as to CMC specifically as a result of a statutory exemption, or as to the Products, then CMC may provide written notice to Held of any asserted change in the law, or its applicability to CMC or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, CMC or the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For CMC:

Jeffrey S. Palmer, President
CMC Group Inc.
12836 South Dixie Highway
Bowling Green, OH 03561

For Held:

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

with a copy to:

Joshua A. Bloom, Esq.
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. MODIFICATION

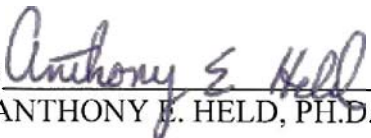
This Settlement Agreement may be modified only by written agreement of the Parties.

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.

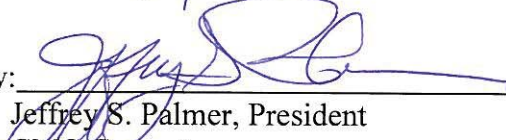
AGREED TO:

Date: 10/4/2015

By: 
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

Date: 10/2/15

By: 
Jeffrey S. Palmer, President
CMC Group Inc.

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