

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Rome Snowboards Corporation

This Settlement Agreement ("Settlement Agreement") is entered into by and between Anthony E. Held, Ph.D., P.E. ("Dr. Held") and Rome Snowboards Corporation ("RMC") with Dr. Held and RMC collectively referred to as the "Parties." Dr. 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. RMC 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 §§ 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Dr. Held alleges that RMC manufactures, imports, sells and/or distributes for sale in California, products containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so without providing the health hazard warning that Dr. Held alleges is required by Proposition 65. 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 all gloves with vinyl/pvc components including, but not limited to, *Rome SDS Technical Hand Protection Reign*, #16GL3504032, UPC #0 609408 190063, #0 609408 709159 that are manufactured, imported, distributed, branded, sold and/or offered for sale by RMC in the State of California, hereinafter the "Products."

1.4 Notice of Violation

On or about January 27, 2017, Dr. Held served RMC, and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation ("Notice"), alleging that

RMC 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

RMC denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 RMC of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by RMC of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

In response to Dr. Held's Notice of Violation, RMC had samples of its Products containing vinyl/PVC components analyzed to reaffirm its compliance with Proposition 65. Based on the environmental analysis, RMC alleges that all of its' Products fall within the Safe Harbor exception of Proposition 65. Nevertheless, RMC desires to settle the allegations of Dr. Held's Notice of Violation rather than incur the costs of litigation.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 17, 2017.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard; Notification

RMC represents that the manufacturer of the exemplar Product (*Rome SDS Technical Hand Protection Reign*, #16GL3504032, UPC #0 609408 190063, #0 609408 709159) at the time the Notice was issued is no longer the manufacturer of said exemplar Product. However, RMC agrees to notify its new supplier, within 60 days of the Effective Date, that except for Products already manufactured for or distributed to RMC, it shall only provide RMC with

Products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance. RMC shall keep a copy of the notification letter for two years and shall make it available to Dr. Held upon his request.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, RMC shall pay \$2,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated 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") by Dr. Held. Within (5) days of the Effective Date, RMC shall provide its penalty payments through the issuance of two checks, the first made payable to "Anthony E. Held, Ph.D., P.E., Client Trust Account" in the amount of \$625 and the second made payable to "OEHHA" in the amount of \$1,875, both checks to be delivered to the address provided in Section 3.3, below. Dr. Held's counsel shall be responsible for remitting OEHHA's portion of the penalty payment under this Settlement Agreement in the amount of \$1,875, to OEHHA.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, RMC expressed a desire to resolve Dr. Held's fees and costs. The Parties then negotiated a resolution of the compensation due to Dr. 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 through the mutual execution of this agreement, RMC shall reimburse Dr. Held and his counsel

\$11,500. RMC's payment shall be delivered to the address in Section 3.3, Within (5) days of the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Dr. Held investigating, bringing this matter to RMC's attention and negotiating a settlement of the matter.

3.3 Payment Address

All payments 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 Dr. Held's Release of Proposition 65 Claims

Dr. Held acting on his own behalf, and *not* on behalf of the public, releases RMC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom RMC directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to RMC.

4.2 Dr. Held's Individual Releases of Claims

Dr. Held, in his individual capacity only and *not* in his representative capacity, provides a release herein 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 Dr. Held of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by RMC prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to RMC. Nothing in this Section affects Dr. Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve RMC's Products.

4.3 RMC's Release of Dr. Held

RMC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Dr. 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 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. 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.

6. 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 RMC shall provide written notice to Dr. Held of any asserted change in the law and shall have no further injunctive 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 RMC from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

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 RMC:

Mark B. Seiger
Seiger Gfeller Laurie LLP
West Hartford Center
977 Farmington Avenue, Suite 200
West Hartford, CT 06107

For Dr. Held:

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

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.

8. **COUNTERPARTS; FACSIMILE AND 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.

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

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

10. **MODIFICATION**

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

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: August 3, 2017

Date: _____

By: 

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

By: _____

Paul Maravetz, President
Rome Snowboards Corporation

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AGREED TO:

AGREED TO:

Date: _____

Date: 8-8-2017

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

By:  _____
Paul Maravetz, President
Rome Snowboards Corporation