

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D. ("Held") and Swix Sport U.S.A, Inc. ("Swix"), with Held and Swix 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 contained in consumer products. Swix employs ten or more individuals 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 and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Held alleges that Swix offers for sale or distributes for sale in the State of California, gloves with vinyl/PVC components that contain di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Held alleges that Swix failed to provide consumers and other individuals exposed to DEHP from the gloves with vinyl/PVC content it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement "Products" are defined as gloves with vinyl/PVC content containing DEHP, that are sold, or distributed for sale in California by Swix including, but not limited to, the *Swix Sport Cross-Tech Glove*, H0591-10000, UPC #7 045951 815283.

1.4 Notice of Violation

On January 27, 2017, Held served Swix, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Swix violated Proposition 65 by failing to provide DEHP exposure warnings for the Products to its customers and consumers in California. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Swix denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, 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 against interest by Swix of any allegation, fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Swix of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Swix. This Section shall not, however, diminish or otherwise affect Swix’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 July 31, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, Swix shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either: (a) Reformulated Products as defined by Section 2.2, below; or (b) Products that are offered by Swix with a clear and reasonable warning


pursuant to Section 2.3.

2.2 Reformulation Standard

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warning

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, for any Products offered for sale in California by Swix that are not Reformulated Products, Swix agrees to only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Swix further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California containing one of the following statements:

 **WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

-or-

 **WARNING:** Reproductive Harm-www.P65Warnings.ca.gov

If after August 30, 2018 there are changes to the “clear and reasonable” warning regulations promulgated by the Office of Environmental Health Hazard Assessment that are successor forms of “clear and reasonable” warning to one of the two forms of warning set forth above, then Swix may use such successor form of warning.

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, Swix agrees to pay a total of \$2,500.00 in civil penalties. The 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Held. Swix will deliver its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) Anthony E. Held, Client Trust Account” in the amount of \$625.00. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Attorneys’ 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, Swix agrees to pay \$18,000.00 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Swix’s management, and negotiating a settlement that provides a significant public benefit. Swix’s payment shall be delivered in the form of a check payable to “The Chanler Group.”

3.3 Payment Address

Within ten (10) calendar days of the Effective Date, all payments required by this Settlement Agreement 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 Swix

This Settlement Agreement is a full, final, and binding resolution between Held and Swix, of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf, or on behalf of his past and current agents, principals, employees, representatives, attorneys, predecessors, successors, assignees and heirs, against Swix, its parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Swix directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by Swix, or at Swix's direction, prior to August 30, 2017, as alleged in the Notice.

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, predecessors, successors, assignees and heirs hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and

releases all claims against Swix and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for any and all claims of a violation of Proposition 65 that was or could have been asserted based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before August 30, 2017 by Swix. The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and are not releases on behalf of the public in California. For avoidance of doubt, all Products manufactured, sold, or distributed for sale by Swix, or at Swix's direction, prior to August 30, 2017 are subject to the foregoing releases by Held, regardless of the date any such Products are sold to a California consumer. Swix's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to DEHP in the Products sold or distributed for sale by Swix, or at Swix's direction after August 30, 2017.

4.2 Swix's Release of Held

Swix, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held, Held's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Swix in this matter, or with respect to the Products up through the Effective Date.

5. 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 remaining provisions 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 otherwise rendered inapplicable by reason of law generally, or as applied to the Products, then Swix may provide written notice to Held of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by 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 Swix:

Judith M. Praitis
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013

For Held:

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

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.

8. 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.

9. **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).

10. **MODIFICATION**

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

11. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: 7/31/2017

Date: 07-31-2017

By: 
ANTHONY E. HELD, PH.D.

By: 
STEVEN POULIN, PRESIDENT
SWIX SPORT U.S.A. INC.