

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1 Ryan Acton and Tingley Rubber Corporation

This Settlement and Release Agreement (“Agreement”) is entered into by and between Ryan Acton (“Acton”) and Tingley Rubber Corporation (“Tingley”). Together, Acton and Tingley are collectively referred to as the “Parties”.

#### 1.2 General Allegations and Product Description

Acton alleges that Tingley imported, manufactured, distributed for sale, shipped for sale, sold, and/or offered for sale in California Vinyl Rainsuit (Item # S62211) and substantially similar products (“Product”) that cause exposure to di(2-ethylhexyl)phthalate (“DEHP”) without first providing exposure clear and reasonable warning under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.6, *et seq.* (“Proposition 65”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and other reproductive harm.

#### 1.3 Notice of Violation(s)

On or about March 26, 2020, Acton served Tingley, Stauffer Glove & Safety and Stauffer Manufacturing Corporation (collectively, “Stauffer”) and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Tingley violated Proposition 65 by failing to warn consumers in California that the Product exposes 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.

#### 1.4 No Admission

Tingley denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products it has imported, manufactured, distributed for sale, shipped for

sale, sold, and/or offered for sale in California, including the Products, have been, and are, in compliance with all laws. Tingley has a comprehensive labeling program in compliance with Proposition 65 regulations for all its affected products and has been labeling all new inventory since 2017. Nothing in this 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 Agreement constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Tingley's obligations, responsibilities, and duties under this Agreement.

### **1.5 Effective Date**

For purposes of this Agreement, the term "Effective Date" is the date on which the last party executes the Agreement.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulated Product**

Commencing within three (3) months of the Effective Date, Tingley agrees to only import or manufacture Product, for sale in California that is (a) "Reformulated Product" or (b) Product with a clear and reasonable warning, as set forth in Section 2.2. For purposes of this Agreement, "Reformulated Product" is Product containing DEHP in concentrations of less than 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. Reformulated Product shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements if the Product contains DEHP and/or other regulated phthalates in a concentration of less than or equal to 1,000 parts per million.

## 2.2 Clear and Reasonable Warning

Commencing within three (3) months of the Effective Date, Tingley shall, for all Product it imports or manufactures for sale in California that are not Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) or (b) below or as defined by the California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600).

Tingley shall employ the use of the warning symbol, which consists of a black exclamation point in a yellow equilateral triangle<sup>1</sup> with a bold black outline, provided in subsection 2.2(a) below.

The warning symbol must be placed to the left of the text of the warning in a size no smaller than the height of the word “WARNING”. The warning shall be provided by sign, label or shelf tag and shall be prominently placed with such conspicuousness<sup>2</sup> 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. Tingley may use any warning that substantially complies with the following options:

- (a) **WARNING:** This product can expose you to chemicals which are known to the State of California to cause birth defects and other reproductive harm and/or cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- (b) **WARNING:** Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## 2.3 Sell-Through

None of the requirements of Subsections 2.1 and 2.2, *supra*, shall apply to, and no other obligations or liabilities under this Agreement shall attach to, any Released Products that are manufactured or imported on or before three (3) months after the Effective Date.

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<sup>1</sup>If the sign, label or shall tag for the product is not printed using the color yellow, the symbol may be provided in black and white.

<sup>2</sup> The parties agree that 6 point arial font shall the conspicuousness requirement for purposes of this Agreement. This agreement shall not abridge the requirements of 27 CCR §25602

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Agreement, Tingley shall pay a total of \$1,500 in civil penalties in accordance with this section. Each penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) to Acton.

#### **3.2 Reimbursement of Attorney’s Fees and Costs**

The parties acknowledge that Acton 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 this Agreement had been settled. Shortly after the other settlement terms had been finalized, Tingley expressed a desire to resolve Acton’s fees and costs. The Parties then attempted to, and did, reach an accord on the compensation due to Acton 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. Tingley shall pay \$11,500 for the fees and costs incurred by Acton in investigating, bringing this matter to Tingley’s attention, and negotiating a settlement in the public interest. The payments set forth in Section 3.1 and 3.2 shall be made within five (5) business days of the Effective Date and shall be paid to “O’Neil Dennis” and delivered to:

O’Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Acton's Individual Release of Claims**

Acton, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives and releases all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Product, including, without limitation, all actions, and causes of action, in law or in equity (including Proposition 65), suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Tingley, (b) Tingley's parent companies, successors, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (c) each entity to whom Tingley directly or indirectly distributes or sells the Products, including without limitation, Stauffer and Stauffer's and Tingley's downstream distributors, wholesalers, customers, retailers, franchises, cooperative members and licensees (collectively "Releasees").

Acton also in his capacity, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, provides a general 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 (including, without limitation, investigation fees and expert fees arising under Proposition 65 for unwarned exposure to DEHP from Products manufactured, sold or distributed for sale in California by Releasees), attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Releasees. Acton acknowledges that he is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Acton, in his capacity only, and on behalf of herself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

#### **4.2 Tingley's Release of Acton**

Tingley, 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 Acton and his attorneys and other representatives, for any and all actions taken or statements made by Acton 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 Product. Tingley acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Tingley in its capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and

benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters

**5. SEVERABILITY**

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the state of California and apply within the state of California. Actions to enforce any provision of this Agreement shall be venued in the Superior Court of Alameda, California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Tingley shall have no further obligations pursuant to this Agreement.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by this 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 to the following addresses:

For Tingley:

Tingley Rubber Corporation  
c/o Anthony Reitano, Esq.  
Herold Law, Professional Association  
25 Independence Boulevard  
Warren, NJ 07059

For Acton:

O'Neil Dennis, Esq.  
385 Grand Avenue, Suite 300  
Oakland, CA 94610

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 Agreement may be executed in counterparts and by facsimile or e-signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. POST EXECUTION ACTIVITIES**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

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

**12. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**AGREED TO:**

**AGREED TO:**

Date: 7/16/2020

Date: \_\_\_\_\_

By: Ryan Acton  
Ryan Acton

By: \_\_\_\_\_  
Tingley Rubber Corporation