

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and RFE Sporting Goods, Inc. (“Settling Entity”). CEH and Settling Entity may each be referred to as a “Party” or collectively as the “Parties.”

1. INTRODUCTION

1.1. On April 14, 2021, CEH served a 60-Day Notice of Violation under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (aka “Proposition 65”) (*i.e.*, the “Notice”) on adidas America, Inc. (“adidas”), the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of n-Nitrosodiethylamine (“NDEA”) in latex resistance bands (“Covered Products”) that are manufactured, distributed, and/or sold or offered for sale by adidas in California.

1.2. The Notice alleges that the Covered Products sold or offered for sale in California by adidas, contain NDEA. The Notice alleges that such Covered Products expose people who touch, wear, or otherwise handle the Covered Products to NDEA, a chemical known to the State of California to cause cancer, without first providing clear and reasonable warning to such persons regarding the carcinogenicity of NDEA. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3. adidas subsequently informed CEH that Settling Entity manufactures, supplies, imports, distributes, offers to sell and/or sells the Covered Products under a license agreement with adidas. On October 14, 2021, CEH served a 60-Day Notice of Violation under Proposition 65 on Settling Entity, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a

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population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of n-Nitrosodiethylamine (“NDEA”) in latex resistance bands that are developed, manufactured, supplied, imported, distributed, offered for sale and/or sold by Settling Entity in California.

1.4. At all relevant times hereto, Settling Entity has employed fewer than ten employees. Accordingly, Settling Entity does not qualify as a “person in the course of doing business” under Proposition 65, and is therefore exempt. Cal. Health & Safety Code §§ 25249.6, 25249.11(b). Settling Entity enters into this Agreement pursuant to its obligation to indemnify and defend adidas with respect to the Notice

1.5 Settling Entity ceased manufacturing Covered Products on or about December 31, 2020.

1.6 The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed, and/or sold by Settling Entity. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

2. DEFINITIONS

2.1. “Covered Products” means latex resistance bands developed, manufactured, supplied, imported, distributed, offered for sale or sold by Settling Entity to or for adidas.

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2.2. “Effective Date” means the date of the last signature on the Agreement.

2.3. “Reformulation Date” means within 60-days following the Effective Date.

3. INJUNCTIVE RELIEF

3.1 Reformulation of Covered Products. As of the Reformulation Date, Covered Products sold or offered for sale in California that Settling Entity develops, manufactures, supplies imports, distributes, sells, or offers for sale shall either: (a) be Reformulated Products pursuant to §§ 3.2 and 3.3, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.4 and 3.5, below. For purposes of this Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in §§ 3.2 and 3.3, below. The warning requirement set forth in §§ 3.4 and 3.5 shall not apply to any Reformulated Product. Settling Entity ceased manufacturing Covered Products on or about December 31, 2020.

3.2 Reformulation Standard. “Reformulated Products” shall mean Products that do not contain NDEA in excess of 10 parts per billion (“ppb”) as determined using ISO 19577-2019 by an independent accredited laboratory that will be sold or offered for sale to California consumers.

3.3 Specification to and Certification from Suppliers. No more than thirty (30) days after the Reformulation Date, Settling Entity shall issue specifications to its suppliers of Covered Products requiring that Covered Products not contain NDEA in excess of 10 ppb, and shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing NDEA on a nationwide basis. Settling Entity shall obtain and maintain written certification(s) from its suppliers of Covered Products confirming that all such Covered Products received by Settling Entity for distribution in California do not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019 by an independent accredited laboratory. Settling Entity shall not be deemed in violation of the requirements of Section 3.1 for any Covered Product to the extent: (a) it has relied on a written certification from its vendor that supplied a Covered Product

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that such Covered Product does not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019 by an independent accredited laboratory and such certification has not previously been demonstrated to be invalid, or (b) it has obtained a test result from an independent third party accredited laboratory reporting that the Covered Product does not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019.

3.4 Clear and Reasonable Warnings.

3.4.1 **Election to Warn.** If, for Products manufactured after the Reformulation Date, Settling Entity is unable to comply with the Reformulation provision set forth in Section 3.1 or otherwise elects to avail itself of the warning option provided by this Section 3.4, Settling Entity shall provide written notice to CEH, and Settling Entity concurrently shall make the additional payment specified in Section 5.3 below. Settling Entity shall then continue to provide warnings in accordance with this Section 3.4 for each Covered Product sold in California.

3.4.2 **Warnings:** A Clear and Reasonable Warning under this Agreement shall state:



WARNING: This product can expose you to chemicals including N-Nitrosodiethylamine (NDEA), which is known to the State of California to cause cancer, birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The word “**WARNING**” shall be displayed in all capital letters and bold print and shall be preceded by the yellow warning triangle symbol depicted above, provided however, the symbol may be printed in black and white if the Covered Product label is produced without using the color yellow. This warning statement shall be prominently displayed on the outer packaging of the Covered Product and shall be displayed with such conspicuousness, as compared with other words, statements or designs as to render it likely to be seen, read and understood by an ordinary individual prior to sale. For internet, catalog or any other sale

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where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. The Parties agree that the specifications for Clear and Reasonable Warnings in this Consent Judgment comply with Proposition 65 and its regulations as of the date of this Consent Judgment, and with regulations adopted on or about August 30, 2016 and which became effective August 30, 2018. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Consent Decree, Settling Entity may seek to modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations in accordance with Section 3.4.1 above.

4. ENFORCEMENT

4.1 The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

4.2 Enforcement Procedures. Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of its intent to enforce the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce

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may, by new action before the Superior Court of California in Alameda County, seek to enforce the terms and conditions contained in this Agreement.

5. PAYMENTS

5.1 Payments by Settling Entity. Within fifteen (15) calendar days of the Effective Date, Settling Entity shall pay the total sum of Sixteen Thousand Dollars and no cents (\$16,000.00) as a settlement payment as further set forth in this Section. Any payment by Settling Entity shall be deemed to be timely and not subject to a late charge and/or other penalty if: (1) postmarked (if sent by the United States Postal Service); or (2) delivered to an overnight carrier (*e.g.*, Federal Express), on or before the deadline set forth in this paragraph.

5.2 Allocation of Payments. The total settlement amount for Settling Entity shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. Any failure by Settling Entity to comply with the payment terms herein shall be subject to a joint and several stipulated late fee to be paid by Settling Entity in the amount of one hundred dollars (\$100.00) for each day the full payment is not received after the applicable payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Entity shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 Two Thousand Five Hundred Dollars (\$2,500.00) as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (*i.e.*, 25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for One Thousand Eight Hundred Seventy Five Dollars (\$1,875.00) shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

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For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for Six Hundred Twenty-Five Dollars (\$625.00) shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 Thirteen Thousand Five Hundred Dollars (\$13,500.00) as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) Eleven Thousand Dollars (\$11,000.00) payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) Two Thousand Five Hundred Dollars (\$2,500.00) payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 To summarize, Settling Entity shall deliver checks made out to the payees and in the amounts set forth below:

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Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$1,875	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$625	LLG
Lexington Law Group	Fee and Cost	\$11,000	LLG
Center For Environmental Health	Fee and Cost	\$2,500	LLG

5.3 If Settling Entity avails itself of the permanent warning option provided for by Section 3.4, Settling Entity shall make an additional payment of Three Thousand Two Hundred Dollars (\$3,200.00) to be split between a civil penalty and ASP as set forth herein, concurrently with its written notice as provided in Section 3.4. Of the additional payment, Six Hundred Forty Dollars (\$640.00) shall be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment of Four Hundred Eighty Dollars (\$480.00) shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 5.2.1 above. The CEH portion of the additional civil penalty payment of One Hundred Sixty Dollars (\$160.00) shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. The remaining Two Thousand Five Hundred Sixty Dollars (\$2,560.00) of the additional payment shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.2.2 above. Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.4 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Entity does not comply fully with its payment

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obligations under this Section 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order requiring Settling Entity to submit a debtor's examination in the Alameda County Superior Court. In the event that Settling Entity fails to submit to any such debtor's examination ordered by the Court, CEH may seek an order holding Settling Entity in contempt of Court.

6. MODIFICATION

6.1 Written Consent. This Agreement may be modified from time to time by express written agreement of the Parties.

7. CLAIMS COVERED AND RELEASED

7.1 This Agreement is a full, final and binding resolution between CEH on behalf of itself and Settling Entity and Settling Entity's parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Settling Entity Releasees"), and all entities to which Settling Entity directly or indirectly distributes or sells Covered Products, including but not limited to adidas, adidas AG, distributors, wholesalers, customers, retailers, franchisees, licensors and licensees ("Downstream Settling Entity Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to NDEA contained in Covered Products that were developed, manufactured, supplied, sold, distributed or offered for sale by Settling Entity prior to the Effective Date.

7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Entity, Settling Entity Releasees, and Downstream Settling Entity Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH regarding a violation of Proposition 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products manufactured by or for Settling Entity prior to the Effective Date .

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7.3 Compliance with the terms of this Agreement by Settling Entity shall constitute compliance with Proposition 65 by Settling Entity, its Settling Entity Releasees and its Downstream Settling Entity Releasees with respect to any alleged failure to warn about NDEA in Covered Products manufactured, distributed or sold by Settling Entity after the Effective Date.

8. NOTICE

8.1 When CEH is entitled to receive any notice under this Agreement, the notice shall be sent by first class or electronic mail to:

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2 When Settling Entity is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail to:

Cheryl Chang
Blank Rome LLP
2029 Century Park East
6th Floor
Los Angeles, CA 90067
chang@blankrome.com

8.3 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. SPECIFIC PERFORMANCE

9.1 The Parties expressly recognize that Settling Entity's obligations under this Agreement are unique. In the event that Settling Entity is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may

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sue in equity for specific performance, and Settling Entity expressly waives the defense that a remedy in damages will be adequate.

10. GOVERNING LAW

10.1 The terms of this Agreement shall be governed by the laws of the State of California.

11. ENTIRE AGREEMENT

11.1 This 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, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. EXECUTION IN COUNTERPARTS

12.1 The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

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13. AUTHORIZATION

13.1 Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

Dated: April 18, 2022

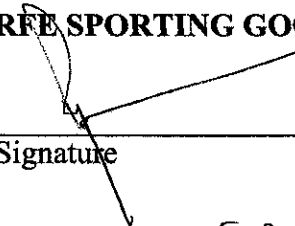
CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: 3 | 21, 2022

RFE SPORTING GOODS, INC.



Signature

A S P Hooper

Printed Name

DIRECTOR

Title