

SETTLEMENT AGREEMENT AND RELEASE

1. INTRODUCTION

1.1 Jay Epps and RH Products, LLC and RH Adhesives

This Settlement Agreement (“Agreement”) is entered into by and between plaintiff Jay Epps (“Epps”) on the one hand, and settling entity Phoenix Adhesives Company, Inc. dba RH Products and dba RH Adhesives (“RH”), on the other hand, with Epps and RH collectively referred to as the “Parties”. Epps 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. RH, a non-California entity with fewer than ten (10) employees, expressly waives its exemption from liability based on its number of employees under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”), for purposes of this Agreement only.

1.2 General Allegations

RH enters into this Agreement on behalf of the noticed alleged violators described in subsection 1.4 below, with whom RH has a contract for one or more of the products at issue which contains indemnity and defense clauses. RH has accepted a tender from the noticed violators and approached Epps to resolve such violators’ alleged liability. Additionally, RH is making commitments in furtherance of the public interest as set forth below.

Epps alleges that RH made, manufactured, distributed, sold and/or offered for sale a type of consumer product for sale in the State of California containing toluene (“toluene” or the “Listed Chemical”), without first providing a “clear and reasonable warning” pursuant to Proposition 65. Epps contends that the warning label and some online sellers’ websites offering the Subject Products (defined in subsection 1.3 below) stated toluene “may” rather than “can” cause birth

defects or reproductive harm. California has identified and listed toluene under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 **Product Description**

The type of products covered by this Agreement are Adhesive Products that RH made, manufactured, distributed, sold and/or offered for sale in California containing toluene on various online websites including but not limited to walmart.com, amazon.com and rhadhesives.com, hereinafter the “Subject Product(s).”

1.4 **Notices of Violation**

Epps served Amazon.com, Inc., Walmart Inc., the California Attorney General, and certain other public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with 60-Day Notices of Violation both dated September 17, 2024 (AG No. 2024-03865, amending the July 26, 2024 notice to Walmart AG No. 2024-03198 and AG No. 2024-03866 notice to Amazon), (collectively, “Notices”). The Notices were re-directed to RH, and allege violations of California Health & Safety Code section 25249.6 *et seq.* for failure to clearly and reasonably warn consumers and customers in California of harm that can result from exposures to toluene from the Subject Products.

To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices. RH understands that Epps may need to issue a 60-Day Notice of Violation expressly naming RH. To facilitate the issuance of such sixty-day letter, RH agrees to certain conditions set forth below in Sections 9 and 14.

1.5 **No Admission**

RH denies the material, factual, and legal allegations in the Notices and maintains that all of the products it made, manufactured, distributed, sold and/or offered for sale in California, including the Subject Products, have been, and are, in compliance with all laws, including Proposition 65. By executing this Agreement, RH and its affiliates and subsidiaries, parents,

directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom RH directly or indirectly distributes or sells the Subject Product, including but not limited to downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees, including but not limited to Amazon.com, Inc. and Walmart Inc. (collectively, the “Releasees”), do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Agreement shall be construed as an admission by any Releasees of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by the Releasees in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Epps or Releasees, may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notices, Releasees maintain that they have not knowingly made, manufactured or distributed, or caused to be made, manufactured or distributed, the Subject Product for sale in California in violation of Proposition 65.

This subsection shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Agreement including the waivers and acknowledgements contained in Sections 6 and 10 below.

1.6 **Effective Date**

For purposes of this Agreement, the term “Effective Date” shall mean the date this agreement is fully executed by the Parties. The term “Compliance Date” refers to April 1, 2025.

2. **INJUNCTIVE RELIEF: TOLUENE-FREE PRODUCT OR WARNING**

2.1 **Commitment to Provide Toluene-Free Product or Warn**

Commencing on the Compliance Date, RH shall not directly make, manufacture, distribute, sell, or offer for sale the Subject Products in the State of California unless they are toluene-free or, alternatively, RH provides clear and reasonable Proposition 65 warnings as outlined in Section 2.3. As used in this Section 2.1, “directly make, manufacture, distribute, sell, or offer for sale” means to directly ship Subject Products into California or to sell Subject Products to a distributor that RH reasonably believes will sell the Subject Products in California.


2.2 **Warning**

The warning requirements set forth in this Section 2 shall apply only to Subject Products that RH directly makes, manufactures, distributes, markets, sells, or ships for sale in the State of California after the Compliance Date that are not toluene-free. The Parties understand and agree that some Subject Products may appear online that contain no warning, but are not available for sale to California consumers (i.e., California sales cannot be completed) and that this complies with this Section 2. To the extent any Subject Products’ formulations change, warnings will be updated to comply with then-current Proposition 65 requirements.

2.3 **Warning Requirements**

Commencing by the Compliance Date, RH agrees that any Subject Product directly distributed, sold or offered for sale in California by itself or that RH provides to its downstream customers, if any, shall contain clear and reasonable Proposition 65 warnings. Any warnings provided pursuant to this Section 2 must be provided in such a conspicuous and prominent manner, as compared with other words, statements, or designs, that will allow the message to be seen, read and understood by an ordinary individual under customary conditions prior to purchase or use as described more fully in (a)-(f) below.


For purposes of this Agreement, a clear and reasonable warning for the Subject Products shall consist of a warning affixed to the packaging, label, or tag of each Subject Product sold in California by RH, or on a placard, shelf tag, sign or electronic device or automatic process, that contains either of the following statements:

 **[CA] PROP 65 WARNING:** This product can expose you to toluene, 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

 **[CA] PROP 65 WARNING:** Reproductive Harm
www.P65Warnings.ca.gov.

or

 **[CA] PROP 65 WARNING:** Can expose you to toluene, a reproductive toxicant. See www.P65Warnings.ca.gov.

- (a) Where a placard, sign, label, tag, or shelf tag for the Subject Product is not printed using the color yellow, the warning symbol may be printed in black and white. The warning symbol shall be placed to the left of the warning's text.
- (b) If the Subject Product's packaging contains consumer information in a foreign language, a warning statement in that language, in addition to English, is required. The foreign language translations provided on the OEHHA website are sufficient for this purpose.
- (c) If the Subject Product is offered for sale to California consumers after the Compliance Date on any website where RH does not have the ability to control the display of warnings and has reason to believe ships to consumers with a California address, RH shall provide a Notification Letter to the retail entity requesting it provide a website warning compliant with this Section 2.3, including that the Subject Product listings shall contain a warning (as set forth above) which shall be displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the warning. The warning (or a clearly and reasonably marked hyperlink to the

warning using the signal word “⚠️ [CA] Warning” or “⚠️ [CA] Prop 65 Warning”) given in conjunction with the online sale of the Subject Products shall appear in one of following product listing locations: (i) prominently placed on the page in which the Subject Product’s image, price and add-to-cart are displayed; (ii) on the same page as the order confirmation for the Subject Products (e.g., review cart URL); (iii) on the page displayed to the purchaser during the checkout process for any shipment recipient with a California address; or (iv) as provided for in 27 California Code of Regulations §25601 *et seq.*, or as the regulations may be subsequently amended.

- (d) The Parties recognize that the warning methods in (a) and (c) above are not the exclusive methods of reasonably transmitting the requisite warning under Proposition 65 and its implementing regulations.
- (e) If Proposition 65 warnings for toluene should no longer be required, RH shall have no further obligations pursuant to this Agreement.
- (f) The use of warnings consistent with this Agreement shall constitute compliance with Proposition 65 with respect to the Subject Products and for any Subject Product in existing inventory which were distributed and/or sold by RH or any of the Releasees after the Compliance Date. There shall be no obligation for RH to provide a warning for Subject Products that entered the stream of commerce prior to the Compliance Date, and the Section 6 release applies to all such Subject Products already in the stream of commerce. Alternatively stated, the Subject Products that are already in the stream of commerce prior to the Compliance Date, are expressly released as set forth in Section 6.

2.4 **Changes in Warning Regulations or Statutes**

In the event that the California Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Subject Products or the chemical at issue,

which are different than those set forth above, then RH may either conform with the revised law, or continue to conform with the terms provided in this Agreement if the new implementing regulations so allow, without being deemed in breach of this Agreement. In doing so, RH will be in compliance with this Agreement as long as it continues to fulfill any warning obligations unaffected by such new changes.

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 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 Subject Products, then RH shall provide written notice to Epps of any asserted change in the law and shall have no further injunctive obligations pursuant to this Agreement with respect to, and to the extent that, the Subject Products are so affected. If regulations or legislation are enacted that modify the current safe harbor regulations, RH is and will be considered in compliance with Proposition 65 if the warning meets the provisions of this Agreement. Moreover, if regulations or legislation are enacted providing that a Proposition 65 warning is no longer required, a lack of warning by RH will not thereafter be a breach of this Agreement.

3. CIVIL PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all the claims alleged in the Notices or referred to in this Agreement, RH shall pay a total of twelve thousand dollars (\$12,000.00) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds (\$9,000.00) remitted to OEHHA and the remaining 25% of the penalty (\$3,000.00) remitted to Epps. Counsel for Epps shall be responsible for delivering OEHHA's portion and Epps's portion of any penalty payment made under this Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Epps 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, RH expressed a desire to resolve Epps' fees and costs. The Parties then negotiated a resolution of the compensation due to Epps' counsel under general contract principles, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations §3201 and/or the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed through the mutual execution of this Agreement, RH shall reimburse Epps' counsel thirty thousand dollars (\$30,000.00). The reimbursement shall cover all fees and costs incurred by Epps investigating, bringing this matter to RH's attention and negotiating a settlement of the matter in furtherance of the public interest for the Subject Products.

5. PAYMENT INFORMATION

Within ten (10) days of the Effective Date, RH shall make a total payment of forty two thousand (\$42,000.00) for the civil penalties and attorneys' fees/costs to Plaintiff's counsel, Chanler LLC, by wire transfer or by way of checks as delineated in Sections 3 and 4. Plaintiff's counsel will provide RH with wire instructions and tax forms prior to payment. The Parties acknowledge that RH cannot issue any settlement payments pursuant to Sections 3, 4 and 5 until after RH receives the requisite tax forms from counsel for Epps. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1 Epps Release of RH, Downstream Customers

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, Epps, in his individual capacity (and not on behalf of the public), and on behalf of himself, his past and current agents, representatives,

attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Subject Product, including, without limitation, all actions, and causes of action, in law or in equity, 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) RH; (b) each of RH's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users, including but not limited to Amazon.com, Inc., and Walmart Inc.; and (c) RH's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, based on the alleged failure to warn about exposures to toluene under Proposition 65 in the Subject Product made, manufactured, distributed, sold or offered for sale in California by RH and Releasees before the Compliance Date, as alleged in the Notices.

Epps also, acting on his own behalf and in his personal capacity, and not in his representative capacity, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all rights he may have 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 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, and demands of Epps, of any nature, character or kind, whether arising in law or equity, known or unknown, suspected or unsuspected, asserted or unasserted, including as set forth in any of the Notices, arising from or related to any alleged or actual exposures to toluene in the Subject Products that were

manufactured, produced, packaged, imported, supplied, distributed, sold, or offered for sale prior to the Compliance Date (Released Claims), against RH and the Releasees.

Nothing in this subsection, therefore, shall affect Epps' right to commence an action under Proposition 65 against RH and its Releasees that do not involve the Subject Products covered by this Agreement. Epps represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against RH. Epps further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Agreement.

The Parties acknowledges that they are 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 RELEASING PARTY.

RH and Epps in his personal capacity only, expressly waive any and all rights and benefits related to the released claims which they may have under, or which may be conferred on them by the provisions of California Civil Code section 1542. The entire agreement shall have no force or effect until payments for the full amount set forth above in Sections 3, 4 and 5 are paid in full by RH.

6.2 **RH Release of Epps**

RH, 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 Epps, his attorneys and other representatives, for any and all actions taken, or statements made (or those that could have been taken or made) by Epps and his attorneys and other representatives, whether in the

course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Subject Product.

7. PUBLIC BENEFIT

It is the understanding of the Parties that the commitments they are agreeing to herein, and the actions to be taken by RH under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of RH that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to RH's alleged failure to provide a warning concerning actual or alleged exposure to the Listed Chemical prior to use of the Subject Products it has made, manufactured, distributed, sold, or offered for sale in California, or will make, manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Subject Products addressed in this Agreement, provided that RH is in material compliance with this Agreement.

8. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

9. 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. As an expressed condition of this Agreement, RH waives any exemptions related to the number of its employees under California Health & Safety Code §25249.6 *et seq.* RH also agrees to accept electronic service of a 60-Day Notice of Violation, if one is issued, at the email address noted in Section 11 below. Nothing in this Agreement shall be interpreted to relieve RH from any obligation to comply with any pertinent state or federal law as related to this Agreement.

In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Subject Product, then RH shall provide written notice to Epps of any asserted change in the law and shall have no further injunctive obligations pursuant to this Agreement with respect to, and to the extent that, the Subject Products are so affected., but shall have no recourse to “claw back” payments already made in accordance with Section 3, 4 and 5 of this Agreement.

10. ENFORCEMENT

If at any time after the Compliance Date, Epps alleges that RH has failed to comply with this Agreement, prior to filing an action or a notice of violation as to RH or any Releasee, Epps shall first provide RH sixty (60) days’ advance written notice of the alleged violation(s). Epps shall provide lot numbers and photographs of the Subject Product packaging for the Subject Product at issue. The Parties shall meet and confer in good faith during such 60-day period in an effort to resolve the matter informally without the need for a new 60-day notice of violation or litigation. If the matter is not resolved within 60 days, Epps may file a new notice of violation. Likewise, should any private third party not subject to this Agreement serve a Proposition 65 notice of violation on RH, Amazon.com, Inc., and Walmart Inc., regarding the subject of this Agreement on or before October 1, 2026, Epps agrees upon RH’s request to file a complaint and this Agreement with the Court to obtain a Consent Judgment, for which RH would pay reasonable fees and costs, not to exceed \$10,000.

11. NOTICES

Unless specified herein, all correspondence, notices, and service of process required to be provided pursuant to this 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; and (iv) electronically transmitted to one party by the other party at the following addresses:

For RH: Malcolm C. Weiss, Esq.
Jennifer MikoLevine, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@hunton.com
jmikolevine@hunton.com

For Epps: Clifford A. Chanler
Chanler, LLC
72 Huckleberry Hill Rd.
New Canaan, CT 06840-3801
clifford@chanlerllc.com

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.

12. COUNTERPARTS; FACSIMILE/E-SIGNATURES

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

13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Epps and his attorneys agree to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

14. WAIVER OF HEALTH & SAFETY CODE §25249.11(b) AND SERVICE OF 60-DAY NOTICE OF VIOLATION

RH waives any exemption related to the number of its employees for the purposes of receiving a 60-Day Notice of Violation for the Subject Products defined in subsection 1.3. As the manufacturer of the Subject Products, RH initially contacted Epps voluntarily after being contacted by Amazon.com, Inc., or Walmart Inc., and freely enters into the terms of this Agreement.

15. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties

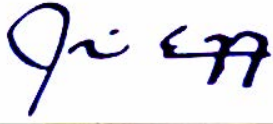
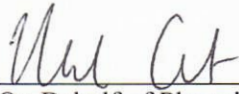
with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

16. MODIFICATION

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

17. AUTHORIZATION

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

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| <p style="text-align: center;">AGREED TO:</p> <p>Date: January 7, 2025</p> <p>By:  _____ Jay Epps</p> | <p style="text-align: center;">AGREED TO:</p> <p>Date: 12/23/24</p> <p>By:  _____ On Behalf of Phoenix Adhesives Company Inc. dba RH Products and dba RH Adhesives</p> |
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