

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held") and Sun and Skin Care Research, ~~Inc.~~ ^{LLC} ("SSCR"), with Held and SSCR each individually referred to as a "Party" and collectively as the "Parties." 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. SSCR 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, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations. Benzophenone (C.A.S. No. 119-61-9) is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. Held alleges that SSCR manufactured, imported, sold, or distributed for sale in the state of California, certain sunscreen products that contain benzophenone in amounts that result in exposure to consumers that require a clear and reasonable warning pursuant to Proposition 65, and that SSCR has failed to provide such a warning to California consumers, resulting in violations of Proposition 65.

1.3 Product Description. The products covered by this Settlement Agreement are: sunscreens alleged to contain benzophenone that are manufactured, sold, or distributed for sale in California by SSCR including, but not limited to, *Bull Frog Mosquito Coast Sunscreen with Insect Repellent SPF 30, UPC #0 41167 33077 7* (hereinafter referred to collectively as the "Products").

1.4 Notice of Violation. On February 26, 2014, Held served SSCR and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that SSCR violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to benzophenone, and advising SSCR of Held's intent to initiate a civil enforcement action against SSCR under Proposition 65. 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. SSCR denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. SSCR maintains that the chemical benzophenone (C.A.S. No. 119-61-9) is not intentionally added to any Product. SSCR has a good faith belief that the chemical benzophenone allegedly contained in the Products is a by-product of the raw ingredient octocrylene, if that solvent is an ingredient in a Product. SSCR is not aware of any other source of benzophenone in the Products. Further, SSCR will continue to work with its raw ingredient supplier(s) to obtain the lowest maximum level of benzophenone in the raw ingredient octocrylene that is used in SSCR's finished sunscreen products. Nothing in this Settlement Agreement shall be construed as an admission by SSCR of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by SSCR of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by SSCR. This section shall not, however, diminish or otherwise affect SSCR'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 February 19, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards. "Reformulated Products" are defined as those Products containing benzophenone: (i) in concentrations less than or equal to 12.5 parts per million ("ppm") when they are analyzed pursuant to a scientifically appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically appropriate methodology for determining the benzophenone content in a substance of the form of the Products herein; or, (ii) in the raw material octocrylene in less than or equal to

200 ppm when analyzed by scientifically appropriate methodology for determining the benzophenone content in the octocrylene used in the formulation of the Products herein. SSCR represents that as of the execution of this agreement, only two product lines contain the maximum allowable octocrylene by percentage and that all product lines contain octocrylene in amounts such that a majority of the products within those lines meet the 12.5 ppm standard. In addition, prior to execution of this agreement, SSCR provided Certificates of Analysis indicating concentrations of benzophenone in octocrylene such that the total amount of benzophenone in those products would fall below the 12.5 ppm standard.

2.2 Compliance. Commencing on the Effective Date, and continuing thereafter, SSCR shall not manufacture, or cause to be manufactured, or order for distribution or sale in California, Products unless they are Reformulated Products pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in Section 2.3 below. In order to ensure that the process for verifying that the raw ingredient suppliers meet SSCR's standards, SSCR shall obtain an initial COA from each supplier, and thereafter obtain a COA from each supplier for each subsequent shipment. Copies of these certifications shall be provided to Held upon request. In addition, and in accordance with 21 C.F.R. § 211.84, the federal regulation which provides for the "Testing and approval or rejection of components" for sunscreen products, SSCR shall conduct at least one test per year for benzophenone for each raw material. Test results obtained by SSCR shall be provided to counsel for Held. If Held contends that SSCR has failed to comply with any portion of Section 2.1, then any test results conducted by Held or his counsel, giving rise to said contention, shall be provided to SSCR, upon request.

2.3 Product Warnings. Commencing on the Effective Date, SSCR shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness 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. Each warning shall be provided in a manner such that the

consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. SSCR shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

(ii) Point-of-Sale Warnings. Alternatively, SSCR may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to SSCR's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contains benzophenone, a chemical known to the State of California to cause cancer.

[list products for which warning is required]

or,

WARNING: The following products contains a chemical known to the State of California to cause cancer.

[list products for which warning is required]

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

[list products for which warning is required]

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

[list products for which warning is required]

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

(b) Mail Order Catalog and Internet Sales. In the event that SSCR's sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, SSCR shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

or,

WARNING: This product contain a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, SSCR may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical, benzophenone, known to the State of California to cause cancer.

or,

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, SSCR must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

or,

WARNING: This product contain a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

If SSCR has knowledge that a Product contains two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), SSCR agrees to an assessment of \$29,250 as a civil penalty. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (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 paid to Held. Within ten (10) days of the Effective Date, SSCR shall make a civil penalty payment of \$29,250. SSCR shall issue a check made payable to "Anthony E. Held, Client Trust Account" which shall be delivered to Held at the address provided in section 3.3.

3.2 Attorney 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, SSCR shall pay \$41,750 for all fees and costs through execution of this Settlement Agreement, including fees and costs incurred investigating, bringing this matter to the attention of SSCR's management, and negotiation of this settlement. SSCR shall issue a check made payable to "The Chanler Group" which shall be delivered to Held at the address provided in section 3.3.

3.3 Payment Procedures. All payments under this Settlement Agreement are due within ten (10) days of the Effective Date, and 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 Held's Release of SSCR. This Settlement Agreement is a full, final, and binding resolution between Held and SSCR of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents,

representatives, attorneys, successors, and assignees, against SSCR, its parents, subsidiaries, ^{stockholders} affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom SSCR directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to benzophenone from Products manufactured, sold or distributed for sale in California by SSCR prior to the Effective Date. The Parties acknowledge that this release shall not extend to entities upstream of SSCR.

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, 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 that he may have against SSCR and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to benzophenone from Products manufactured, sold, or distributed for sale in California by SSCR prior to the Effective Date. The Parties acknowledge that this release shall not extend to entities upstream of SSCR. The releases in Section 4.1 are provided in Held's individual capacity and are not releases on behalf of the public.

4.2 SSCR's Release of Held. SSCR, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against 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 Held 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 Products.

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. Benzophenone (C.A.S. No. 119-61-9) is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, including the delisting of benzophenone, then SSCR may provide written notice to Held of any asserted change in the law, and with the exception of sections 3.1 and 3.2 above, have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement 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 on any Party by the other at the following addresses:

For SSCR:

Stanley W. Landfair, Esq.
Rebecca Woodson, Esq.
One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105

For Held:

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

Any Party may, from time to time, specify in writing to the other Party 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. POST-EXECUTION ACTIVITIES

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

10. MODIFICATION

In the event OEHHA designates a No-Significant Risk Level ("NSRL") for benzophenone (C.A.S. No. 119-61-9), which either Party asserts would allow for the Products to contain levels of benzophenone in amounts greater or less than those set forth above in Section 2.1, either Party may provide written notice to the other Party of any assertion and the Parties shall confer within thirty (30) days to attempt to agree upon positional modification of this Settlement Agreement. Should such attempts at informal resolution of a modification fail, either Party will provide written notice to the other Party of its intent to adopt a modified Reformulation standard. Upon receipt of such notice, the challenging Party shall have the right to move to modify the terms and conditions contained in the Settlement Agreement by proceedings in San Francisco, California before the Judicial Arbitration and Mediation Service ("JAMS") or a similar professional dispute resolution entity, or by any other available remedy at law, with the sole issue to be adjudicated being the technical question of whether the NSRL would allow for a higher or lower benzophenone content in the Products than that set forth in Section 2.1. The Party seeking modification of the agreement agrees to pay all fees and costs of the arbitration. In no event shall funds paid pursuant to Section 3, prior to any modification of this agreement, be returned to SSCR.

11. DISPUTE RESOLUTION

If either Party determines at a future date that a violation of this agreement has occurred, such Party shall provide notice to the other Party. Prior to bringing any action to enforce any requirement of this settlement agreement, the party alleging a violation of this settlement agreement shall provide the other party with written notice of the grounds for such allegation together with all supporting information as well as a complete demand for the relief sought. The Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve the matter informally, including providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, the Party alleging a violation may file its lawsuit, or any other available remedy at law, seeking the proposed relief.

12. AUTHORIZATION

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

AGREED TO:

Date: February 19, 2015

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

AGREED TO:

Date: Feb 20/15

By: [Signature]
Sun & Skin Care Research, Inc.
LLC

[Signature]
2/20/15