

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Uline, Inc.**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and Uline, Inc. (“Uline”) with Dr. Held and Uline each individually referred to as a “Party” and collectively referred to as the “Parties.” Dr. 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. Uline 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, California Health & Safety Code section 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Dr. Held alleges that Uline manufactured, imported, distributed, and/or sold in California vinyl/PVC gloves containing Diisononyl phthalate (“DINP”) without first providing the clear and reasonable warning required by Proposition 65, thereby causing consumer exposures to DINP. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as vinyl/PVC gloves manufactured, distributed and/or sold in California by Uline including, but not limited to, *ULINE Vinyl Gloves, S-15389S* (hereinafter referred to as “Covered Products”).

### **1.4 Notice of Violation**

Dr. Held provided Uline and certain requisite public enforcement agencies with a 60-Day Notice of Violation dated April 24, 2015, (“Notice”) alleging that Uline was in violation of Proposition 65 for failing to warn consumers in California that the Covered Products expose

users to DINP. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Uline denies the material, factual and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, and/or distributed for sale in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Uline 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 Uline of any fact, finding, conclusion of law, issue of law or violation of law, the same being specifically denied by Uline. However, this section shall not diminish or otherwise affect Uline'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 October 22, 2016.

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

### **2.1 Reformulated Covered Products**

Commencing on the Effective Date, and continuing thereafter, Uline shall only manufacture, sell, and/or distribute for sale in California: (i) Reformulated Covered Products; or (ii) Covered Products which have a compliant Proposition 65 warning pursuant to Section 2.2. For purposes of this Settlement Agreement, "Reformulated Covered Products" are Covered Products containing a maximum concentration of 1,000 parts per million (0.1%) of DINP when sampled and analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the DINP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

As of the Effective Date, Uline shall not manufacture, import, distribute, sell and/or offer the Products for sale in the State of California unless they are Reformulated Covered Products pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in this Section. However, Uline represents that it has implemented a warning program, in advance of approval of this Settlement Agreement. As such, any Covered Product that is or was ordered for distribution or sale in California prior to 30 days after the Effective Date, may contain the warning currently provided by Uline. Any Covered Product that does not contain Uline's current warning or that is ordered for distribution or sale in California after the Effective Date, shall contain warnings as per the below.

**(a) Product Warning:** Commencing on the Effective Date, for all Covered Products that are not Reformulated Covered Products, Uline agrees that it will only offer such Covered Products for sale in California with a clear and reasonable Proposition 65 warning. A clear and reasonable warning may consist of a warning affixed to the packaging, label, tag, or directly to the Covered Product as follows:

**California Proposition 65 Warning:** This product contains DINP, a chemical known to the State of California to cause cancer.

Or, in the event that Uline has evidence that the Covered Product contains a Proposition 65-listed chemical in addition to DINP, that is known to cause cancer:

**California Proposition 65 Warning:** This product contains chemicals known to the State of California to cause cancer.

**(b) Internet Website Warning:** As of November 15, 2016, a warning shall be given in conjunction with internet sales of the Covered Product by Uline, which warning shall appear, upon entry of a California shipping address, on one or more web pages displayed to a purchaser during the checkout process. The warning shall be clearly visible prior to completion of the purchase and shall feature prominently on the same page as the Covered Product. Uline may utilize a designated symbol to cross reference the applicable warning. The designated symbol must appear adjacent to or immediately following the display, description, or price of the

Covered Product for which a warning is being given, provided that the language defining the term “designated symbol” is consistent with the following statement and also appears elsewhere on the same web page:

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

Or, in the event that Uline has evidence that the Covered Product contains a Proposition 65-listed chemical in addition to DINP, that is known to cause cancer:

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

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

#### **3.1 Civil Penalty Payment**

Pursuant to Health & Safety Code section 25249.7(b), Uline shall pay \$6,000 in civil penalties in accordance with this Section. The penalty payment shall be allocated in accordance with Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) by Dr. Held. On or before November 4, 2016, Uline shall provide its payments in a check made payable to “Anthony E. Held, Client Trust Account” in the amount of \$1,500 and a check made payable to “OEHHHA” in the amount of \$4,500, to be delivered to the address provided in Section 3.2, below. Dr. Held’s counsel shall be responsible for remitting Uline’s penalty payment(s) under this Settlement Agreement to OEHHHA.

#### **3.2 Payment Procedures**

All payments owed to Dr. Held, pursuant to this Settlement Agreement, shall be delivered to the following payment address:

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

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Dr. Held 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 fee issue to be resolved after the material terms of this Settlement Agreement had been settled. The parties then reached an accord on the compensation due to Dr. Held 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 related to this matter. Under these legal principles, Uline shall reimburse Dr. Held and his counsel \$21,000 for fees and costs incurred, and yet to be incurred, as a result of, among other things, investigating, bringing this matter to the attention of Uline's management, negotiating a settlement of the matter in the public interest and complying with all reporting obligations. Uline shall issue a check to "The Chanler Group" on or before November 4, 2016 to the address listed in Section 3.2 above.

#### **5. CLAIMS COVERED AND RELEASED**

##### **5.1 Dr. Held's Release of Proposition 65 Claims**

Dr. Held acting on his own behalf, and *not* on behalf of the public, releases Uline, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Uline directly or indirectly distribute or sell Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DINP in the Covered Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP from the Covered Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Uline, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Uline.

## **5.2 Dr. Held's Individual Release of Claims**

Dr. Held, in his individual capacity only and *not* in his representative capacity, provides a 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, attorneys' fees, damages, losses, claims, liabilities, and demands of Dr. Held of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DINP in the Covered Products manufactured, imported, distributed, or sold by Uline prior to the Effective Date. The Parties further understand and agree that this Section 5.2 release shall not extend upstream to any entities that manufactured the Covered Products, or any component parts thereof, or any distributors or suppliers who sold the Covered Products, or any component parts thereof to Uline. Nothing in this Section affects Dr. Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Uline's Covered Products.

## **5.3 Uline's Release of Dr. Held**

Uline, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Dr. 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 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

## **6. SEVERABILITY**

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

## **7. 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of

this Settlement 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 Covered Products, then Uline shall provide written notice to Dr. Held of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Uline from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

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

For Uline:

Phillip D. Hunt, Executive Vice President  
Uline, Inc.  
12575 Uline Drive  
Pleasant Prairie, WI 53158

With a copy to:

Megan O. Curran, Esq.  
Foley & Lardner LLP  
555 California Street  
Suite 1700  
San Francisco, CA 94104-1520

For Dr. Held:

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

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.

**9. COUNTERPARTS; FACSIMILE AND SIGNATURES**

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

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Dr. Held agrees to comply with the reporting requirements referenced in California Health & Safety Code section 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: 11/2/2016

Date: 10-27-16

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

By: *F. Unick*  
Frank Unick, Chief Financial Officer  
Uline, Inc.