

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Zoom Eyeworks, Inc.

This Settlement Agreement (“Agreement”) is entered into by and between citizen enforcer of Proposition 65, Anthony E. Held, Ph.D., P.E. (hereinafter “Held”) and Zoom Eyeworks, Inc. (hereinafter “Zoom”), with Held and Zoom collectively referred to as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. The Zoom entities each employ ten or more persons and are persons in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Held alleges that Zoom has manufactured, distributed and/or sold in the State of California eyeglass cases with vinyl components containing the plasticizer phthalate di(2-ethylhexyl)phthalate (hereinafter “DEHP”) including, but not limited to, *Zoom Accessories Eyeglass Case (#0 78041 08208 8)*. DEHP, as well as, the heavy metal lead, are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.* (“Proposition 65”), as chemicals known to the State of California to cause birth defects and other reproductive harm. Lead and DEHP shall be referred to collectively herein as the “Listed Chemicals.”

1.3 Product Description

The products that are covered by this Agreement are defined, as follows: eyeglass cases with vinyl components manufactured, distributed and/or sold in California by Zoom which contain the Listed Chemicals. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about September 1, 2010, Held served Zoom and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Zoom and such public enforcers with notice that alleged that Zoom was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Zoom denies the material factual and legal allegations contained in Held's Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Zoom of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Zoom of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Zoom. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Zoom under this Agreement.

1.6 Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the date by which the Agreement is executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND RECALL

2.1 Reformulation Commitment

As of the Effective Date, Zoom shall only distribute and/or sell, or cause to be distributed, and/or sold, Products in California that are Phthalate Free and Lead Free, as set forth below. For purposes of this Agreement, "Phthalate Free" shall mean containing less than or equal to 1,000 parts per million ("ppm") of the DEHP when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C for DEHP. Further, for purposes of this Agreement, "Lead Free" shall mean Products which produce a test result no higher than: (a) 100 ppm of lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; (b) 1.0 micrograms (ug) of lead as applied to all surfaces of the Product performed as outlined in NIOSH Test Method No. 9100; and (c) 90 ppm for Paint or other Surface Coatings¹ on the Products. By

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¹ Pursuant to 16 C.F.R. § 1303.2(b), as amended from time to time, for purposes of this Settlement Agreement the term "Paint or other Surface Coatings" means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

entering into this Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Zoom by laws other than Proposition 65.

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

In settlement of all the claims referred to in this Agreement against it, Zoom shall pay \$8,000 in civil penalties to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies remitted to Held as provided by Health & Safety Code §25249.12(d). Zoom shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for OEHHA ("The Chanler Group in Trust for OEHHA") in the amount of \$6,000, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Anthony E. Held" in the amount of \$2,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: the first to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$6,000; the second 1099 to Held in the amount of \$2,000, whose address and tax identification number shall be furnished, upon request, at five calendar days before payment is due. The payments shall be delivered on or before ten days of the Effective Date, at the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street, Suite 214
Berkeley, CA 94710-2565

4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Zoom shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Zoom's attention, and negotiating a settlement in the public interest. Zoom shall pay Held and his counsel \$28,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered on or before ten days of the Effective Date, at the following address:

THE CHANLER GROUP
Attn: Proposition 65 Controller
2560 Ninth Street, Suite 214
Berkeley, CA 94710-2565

Zoom shall issue a separate 1099 for fees and cost paid in the amount of \$28,000 to The Chanler Group, 2560 Ninth Street, Suite 214, Berkeley, CA 94710-2565 (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Release of Zoom and Downstream Customers

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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 Zoom and each of its licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those Claims that arise under Proposition 65, as such Claims relate to Zoom's alleged failure to warn about exposures to or identification of DEHP contained in the Products.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Zoom and each of its Releasees as such Claims relate to Zoom's alleged failure to warn about exposures to or identification of DEHP and lead contained in the Products.

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The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Zoom.

5.2 Zoom's Release of Held

Zoom waives any and all claims against Held, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. SEVERABILITY

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

7. ATTORNEY'S FEES

In the event that, after the execution of this Agreement, (1) a dispute arises with respect to any provision of the Agreement, or (2) either party takes reasonable and necessary steps to enforce the terms of this Agreement, the prevailing party in such dispute or enforcement action shall be entitled to reasonable attorneys' fees and costs.

8. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Zoom shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Zoom:
Steven Kesten, Esq.
P.O. Box 426
San Anselmo, CA 94979

For Held:
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street, 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.

10. COUNTERPARTS; SIGNATURES

This 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. A facsimile or .pdf signature shall be as valid as the original.

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

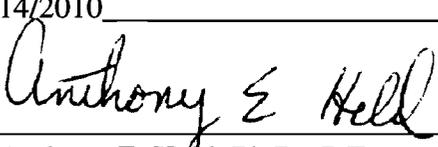
Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

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

13. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: <u>12/14/2010</u>	Date: _____
By: <u></u>	By: _____
Anthony E. Held, Ph.D., P.E.	John Melin, President Zoom Eyeworks, Inc.

For Zoom:
Steven Kesten, Esq.
P.O. Box 426
San Anselmo, CA 94979

For Held:
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street, Suite 214
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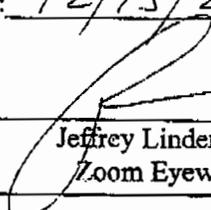
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The undersigned are authorized to execute this Agreement on behalf of themselves and their respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:	AGREED TO:
Date: _____	Date: <u>12/13/2010</u>
By: _____ Anthony E. Held, Ph.D., P.E.	By: _____  Jeffrey Linden, President Zoom Eyeworks, Inc.