

## **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 CWC Inventories, Inc. (“CWC”), with Held and CWC 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. CWC 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 § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Held alleges that CWC manufactures, distributes, and/or sells in the state of California, toiletry cases/bags containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects and other reproductive harm. DEHP is referred to hereinafter as the “Listed Chemical.”

#### **1.3 Product Description**

The products covered by this Settlement Agreement, and to which this agreement is specifically limited, are Calgon toiletry cases/bags containing DEHP identified and known as the *Calgon Take Me Away Set (#7 83010 00907 1)* (“Covered Products”).

#### **1.4 Notice of Violation**

On April 8, 2011, Held served CWC and various public enforcement agencies with a document titled “60-Day Notice of Violation” (“Notice”) that informed the recipients that CWC was allegedly in violation of California Health & Safety Code § 25249.6 for not having provided a clear and reasonable warning to its customers and consumers in California to inform them that the Products expose users to the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has commenced and diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

CWC denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold in California, including the Products, have been, and are, in compliance with all laws. Moreover, CWC states that it no longer manufactures or sells the Products, including the *Calgon Take Me Away Set (#7 83010 00907 1)*, and that the last date of CWC's sale or shipment to California was September 2009. Nothing in this Settlement Agreement shall be construed as an admission by CWC 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 CWC of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by CWC. This section shall not, however, diminish or otherwise affect CWC'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 November 7, 2011.

**2. INJUNCTIVE RELIEF**

As of the Effective Date, CWC represents that it no longer manufactures or sells the Covered Products. CWC agrees however, that should it offer the Covered Products in the future, it will offer only DEHP Free Products. For purposes of this settlement agreement, "DEHP Free" means Products containing no more than 1000 parts per million (0.1%) DEHP content when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method utilized by a state or federal agency to determine DEHP content in a solid substance.

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

In settlement of the violations alleged in the Notice and referred to in this Settlement Agreement, CWC shall pay \$2,500 in civil penalties. The penalty payment shall be allocated according to California Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent

(75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) remitted to Held.

CWC shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$1,875; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$625. Two 1099 forms shall also be provided for payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose address and tax identification number shall be furnished, upon request, after the date that this Settlement Agreement is fully executed by the Parties. CWC shall deliver payment to Held’s counsel within five days of the Effective Date at the following 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 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 this fee issue to be resolved after the material terms of the agreement had been settled. CWC then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through the mutual execution of this agreement. CWC shall pay \$19,500 for fees and costs incurred by Held and his counsel as a result of investigating, bringing this matter to CWC’s attention, and negotiating a settlement in the public interest. CWC shall deliver its payment in the form of a check payable to “The Chanler Group” within five days of the Effective Date at the following address:

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

CWC shall also issue a third 1099 form for payments made pursuant to this Section to “The Chanler Group” (EIN: 94-3171522).

**5. CLAIMS COVERED AND RELEASED**

**5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final, and binding resolution between Held on behalf of himself and the public in California, and CWC, of any violation of Proposition 65 that was or could have been asserted by Held against CWC, its parent companies, subsidiaries, affiliated entities under common ownership, directors, officers, employees, shareholders, attorneys, and each person or entity to whom CWC directly or indirectly distributes or sells the Products, including, without limitation, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on unwarned exposures to the Listed Chemical contained in the Products sold by CWC.

**5.2 Held’s Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, 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 arising under Proposition 65 with respect to the Listed Chemical contained in the Products (collectively “Claims”) arising under Proposition 65 for unwarned exposures to the Listed Chemical contained in the Products sold by CWC.

**5.3 Held's Individual Release of Claims**

Held, in his individual capacity only and *not* in his representative capacity, also provides a release which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character, or kind arising out of alleged or actual unwarmed exposures to the Listed Chemical contained in the Products sold by CWC.

**5.4 CWC's Release of Held**

CWC on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims 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.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining 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 as to the Products or the Listed Chemical, then CWC shall endeavor to provide written notice to Held of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve CWC 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 CWC:

Mark Ginsberg, President  
CWC Inventories, Inc.  
2644 Metro Boulevard  
Maryland Heights, MO 63043

With a copy to:

Mark Sowers, Esq.  
Lewis Rice Fingersh, LLP  
600 Washington Avenue, Suite 2500  
St. Louis, MO 63101

For 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 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.

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

Held agrees to comply with the reporting requirements referenced in Health & Safety Code § 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:**

**APPROVED**

*By Anthony Held at 4:36 pm, Oct 21, 2011*

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Anthony E. Held*  
Anthony E. Held

**AGREED TO:**

Date: \_\_\_\_\_

10 / 19 / 11

By: \_\_\_\_\_

*Mark A. Ginsberg*  
Mark Ginsberg, President  
CWC Inventories, Inc.