

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and The Design and Source Holding Company, Ltd.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and The Design and Source Holding Company, Ltd. (“Design and Source”), with Dr. Held and Design and Source collectively referred to as the “Parties.” Dr. Held is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Design and Source 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

Dr. Held alleges that Design and Source has manufactured, distributed, and/or offered for sale in California belts containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP (hereinafter “Listed Chemical”) is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Design and Source asserts that it has conducted an independent investigation of the Products (as defined in Section 1.3) identified on the Notice (as defined in Section 1.4), and based thereon, denies that the subject product contained the Listed Chemical, or if it did, that the amount present was such that Design and Source was not required to provide a warning under the “Safe Harbor” provisions of Proposition 65.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: belts containing the Listed Chemical such as, but not limited to, the belt offered

in conjunction with the *In Vain Shirt and Belt Set, Grey Cobble Stone, Style D12778ST, (#7 67110 92897 5)*. All such belts containing the Listed Chemical are referred to hereinafter as the “Products.”

1.4 Notice of Violation

On or about December 21, 2010, Dr. Held served Design and Source and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Design and Source and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 by Design and Source for failing to warn its customers and consumers in California that the Products it sold exposed users to the Listed Chemical. 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

As detailed above, Design and Source denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Design and Source of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Design and Source of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Design and Source. However, this section shall not diminish or otherwise affect Design and Source’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 May 9, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Design and Source shall only manufacture or cause to be manufactured for sale in California Products that are Phthalate Free. For purposes of this Settlement Agreement, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million (0.1%) each of the Listed Chemical, n-butyl benzyl phthalate (BBP), and di-n-butyl phthalate (DBP) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

Design and Source further commits that 100% of the Products that it offers for sale in California after the Effective Date shall be Phthalate Free.

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

Pursuant to California Health & Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice and Complaint and referred to in this Settlement Agreement, Design and Source shall pay \$10,000 in combined penalty payments and credits.

For its cooperation in the settlement process and its commitment to reformulate the Products to be Phthalate Free pursuant to Section 2.1 above, Dr. Held shall provide Design and Source with a penalty credit of \$6,500. Thereafter, the remaining penalty amount of \$3,500 will be paid by Design and Source and apportioned according to Health & Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent of the penalty amount remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent of the penalty paid to Dr. Held.

Design and Source shall issue two checks for the penalty payment: (a) one check payable to "The Chanler Group in Trust for OEHHA" in the amount of \$2,625, and (b) one to "The Chanler Group in Trust for Dr. Anthony E. Held" in the amount of \$875. Two 1099 forms shall be provided for the above payments to: (a) Office of

Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Dr. Anthony E. Held, whose address and tax identification number shall be furnished, upon request, at least five (5) calendar days before payment is due. Payment shall be delivered on or before 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 reached an accord on the compensation due to Dr. Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Design and Source shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to Design and Source's attention, and negotiating a settlement in the public interest. Design and Source shall pay Dr. Held's counsel \$23,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third check made payable to "The Chanler Group" and shall be delivered on or before the Effective Date at the following address:

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

Design and Source shall issue a separate 1099 for attorneys' fees and costs paid to The Chanler Group (EIN: 94-3171522).



5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of Design and Source

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself and in his representative capacity, 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 attorney's fees) of any nature (collectively "Claims"), against Design and Source and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors, 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 that arise under Proposition 65, as such Claims relate to Design and Source's alleged failure to warn about exposures to the Listed Chemical contained in the Products.

5.2 Design and Source's Release of Dr. Held

Design and Source, on behalf of itself and its Releasees, waives any and all claims against Dr. Held and his attorneys and other representatives for any and all actions taken or statements made by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the

Products, then Design and Source may provide written notice to Dr. 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.

7. NOTICES

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

To Design and Source:

~~SANJAY KHANDIKAR, President~~
MANU MIRCHANDANI, VICE PRESIDENT,
The Design and Source Holding Company, Ltd.
99 Hook Road, Section 5
Bayonne, NJ 07002

With copy to:

Michael C. Baum, Esq.
Andrew V. Jablon, Esq.
Resch, Polster & Berger LLP
9200 Sunset Blvd., 9th Floor
Los Angeles, CA 90069

To 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.

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. A facsimile or PDF signature shall be as valid as the original.

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

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

10. MODIFICATION

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

11. 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:

Anthony E. Held

AGREED TO:

Date:

By:

APPROVED
By Tony Held at 2:11 pm, Apr 27, 2011

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

By:

Sumant Chandiramani, President
Design and Source Holding Company, Ltd.

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

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

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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:

AGREED TO:

Date: _____

Date: 5/3/11

By: _____

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

By:  _____

~~Suman Chaudhary, President~~ **MANU MERCHANDANI**
Design and Source Holding Company, Ltd. **VICE PRESIDENT.**