

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Militti Sales & Promotions, L.L.C.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Held”), and Militti Sales & Promotions, L.L.C. (“Defendant”), with Held and Defendant collectively referred to as the “parties.” Held is an individual residing in California who contends he promotes awareness of exposures to toxic chemicals and improves human health by reducing or eliminating hazardous substances contained in consumer products. Defendant 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 Defendant manufactured, distributed, and/or sold in the State of California, coin purses 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 that are covered by this Settlement Agreement are defined as coin purses containing DEHP, including, but not limited to, the *Coin Purse (#6 87110 26466 1)* that are sold by Defendant in California (“Products”).

1.4 Notice of Violation

On May 4, 2011, Held served Defendant and various public enforcement agencies with a document titled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Defendant was allegedly in violation of California Health & Safety Code § 25249.6 for failing to warn their customers and consumers in California that the Products expose users to the Listed

Chemical. No public enforcer has commenced and diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Defendant denies the material, factual, and legal allegations contained in Held's Notice and maintain that all of the products that they have sold 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 Defendant 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 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 1, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date, Defendant shall only ship, sell, or offer to ship for sale in California Products that are "DEHP-Free." For purposes of this Settlement Agreement, DEHP-Free shall mean Products containing no more than 1000 parts per million (0.1%) of the Listed Chemical when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

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

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims and violations alleged in the Notice and referred to in this Settlement Agreement, Defendant shall pay \$10,000 in combined civil penalty payments and credits. As a result of Defendant's commitment

to reformulate the Products to comply with the DEHP-Free, 1000 ppm standard established by Section 2.1, above, Held will provide a penalty credit of \$4,000. Thereafter, Defendant shall pay the remaining sum of \$6,000.

Civil penalties shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the State of California Environmental Protection Agency's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% remitted to Held. Defendant shall issue two checks for the civil penalty payments to: (a) "The Chanler Group in Trust for Office of Environmental Health Hazard Assessment" in the amount of \$4,500; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$1,500. Two 1099 forms shall also be provided 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, five days before payment is due. The payments shall be delivered to Held's counsel within ten (10) 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. Defendant then expressed a desire to resolve the fee and cost issue as part of the settlement terms to determine whether a settlement could be 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. Defendant shall pay the total

amount of \$30,000 for fees and costs incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement which Held believes is in the public interest. Defendant shall make the check payable to "The Chanler Group" and shall issue a separate 1099 for fees and costs (EIN: 94-3171522). Payment shall be due as follows:

1. The first payment of \$10,000 shall be due on January 1, 2012
2. A second payment of \$10,000 shall be due on February 1, 2012
3. A third payment of \$10,000 shall be due on March 1, 2012.

Payments pursuant to this section shall be delivered to Held's counsel ~~within ten (10) 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

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, and Defendant, of any violation of Proposition 65 that was or could have been asserted by Held against Defendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and to whom Defendant directly or indirectly distributes or sells the Products, including, without limitation, Tower Energy Group, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products sold by Defendant.

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, but exclusive of fees and costs on appeal, arising under Proposition 65 with respect to the Listed Chemical contained in the Products (collectively "Claims"). The release provided by this Section is limited to those Claims that were brought or could have been brought by Held against Defendant and Releasees for unwarned exposures to the Listed Chemical contained in the Products sold by Defendant, as such claims are alleged in the Notice.

5.3 Held's Individual Release of Claims

Held, also 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 claims, liabilities, and demands of any nature, character or kind arising out of alleged or actual exposures to the Listed Chemical contained in the Products. The individual release provided by this Section is limited to those Claims that were brought or could have been brought by Held against Defendant and Releasees for unwarned exposures to the Listed Chemical contained in the Products sold by Defendant, as such claims are alleged in the Notice.

5.4 Defendant's Release of Held

Defendant 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 or otherwise seeking to enforce Proposition 65 against them in this matter with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provision of this Settlement Agreement is deemed 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, then Defendant shall 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 Defendant 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 Defendant:

Lawrence Militti, President
Militi Sales & Promotions, L.L.C.
13436 Industrial Road
Omaha, NE 68137

With a copy to:

William D. Wick, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

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.

If requested in writing by Defendant (within twelve months of the Effective Date), Dr. Held shall file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law, and Dr. Held shall reasonably cooperate with Defendant and use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Defendant will reimburse Dr. Held and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Dr. Held or his counsel unless a written request is made by Defendant to have Dr. Held file a complaint and seek a consent judgment. Defendant will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Defendant within ten days after its receipt of monthly invoices from Dr. Held for work performed under this paragraph.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, 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 9:00 am, Dec 09, 2011

Date: _____

By: _____

Anthony E. Held, P.A.D., P.E.

AGREED TO:

Date: _____

By: _____

Lawrence Militti, President
Militti Sales and Promotions, L.L.C.