

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Anthony E. Held, Ph.D., P.E. and Ricardo Beverly Hills, Inc.**

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Dr. Held”) and Ricardo Beverly Hills, Inc. (“RBH”), with Dr. Held and RBH collectively referred to as the “Parties” and each individually as a “Party.” Dr. 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. RBH employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Dr. Held alleges that RBH has manufactured, distributed, sold, and/or offered for sale 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.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as toiletry cases/bags containing DEHP manufactured, distributed, sold and/or offered for sale in California by RBH, including, but not limited to, *Ricardo Beverly Hills Essentials Organizer, Style #3263/30513001ORG (#0 18982 32631 5)*, hereafter “Products.”

#### **1.4 Notices of Violation**

On May 4, 2011, Dr. Held served RBH and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that alleged that RBH 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 May 4, 2011, Notice.

### **1.5 No Admission**

RBH denies the material, factual and legal allegations contained in Dr. 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 Proposition 65 and all other applicable laws. RBH has informed Dr. Held that, prior to the issuance of the Notice, RBH had begun implementing a warning program for products intended for sale in California. Nothing in this Settlement Agreement shall be construed as an admission by RBH of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by RBH of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of RBH under this Settlement Agreement.

### **1.6 Effective Date**

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

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing a maximum concentration, by weight, of DEHP, Di-n-butyl phthalate ("DBP"), and butyl benzyl phthalate ("BBP"), each, of 1,000 parts per million ("ppm") or less in each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance. For purposes of this Settlement Agreement, an "Accessible Component" means a poly vinyl chloride or other soft plastic, vinyl, or synthetic

leather component of a Product that could be touched by a person during reasonably foreseeable use.

## **2.2 Reformulation Commitment**

As of March 1, 2012, all Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by RBH shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

The parties acknowledge and agree that RBH has already implemented a warning program for all Products manufactured, distributed, and/or sold by RBH in the State of California that do not qualify as Reformulated Products as provided by Section 2.1 above. The warning program that is already in place, and utilized by RBH, provides as follows:

**California Proposition 65 Warning:**  
WARNING: This product contains chemicals known to the state of California to cause cancer, or birth defects or other reproductive harm.

RBH shall continue to use said warnings for all Products manufactured, distributed, and/or sold by RBH in the State of California other than Reformulated Products upon the date that this Settlement Agreement is fully executed by all Parties and through and until March 1, 2012, at which time all Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by RBH must qualify as Reformulated Products pursuant to the standards set forth in Section 2.1 above. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The warning shall be placed on, or affixed to, the packaging of the Product or the Product itself. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

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

RBH shall pay a civil penalty of \$2,500, to be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of

California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony E. Held, Ph.D., P.E.. This civil penalty reflects a credit of \$5,000 based on RBH's commitment to reformulate the Products pursuant to Section 2.1 and 2.2 above. RBH shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of \$1,875 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$625, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony E. Held, Ph.D., P.E., whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Dr. Held's counsel within 5 days after the Settlement Agreement is fully executed by all Parties 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 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 this fee issue to be resolved after the material terms of the agreement had been settled. RBH 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 Dr. 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. RBH shall pay the total amount of \$19,500 for fees and costs incurred as a result of investigating, bringing this matter to RBH's attention, and negotiating a settlement in the public interest. RBH shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler

Group” and shall deliver payment within 5 days after the Settlement Agreement is fully executed by all Parties, to 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 Dr. Held, on behalf of himself and the public, and RBH, of any violation of Proposition 65 that was or could have been asserted by Dr. Held against RBH, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom RBH directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisors, franchisees, cooperative members, licensors, and licensees (collectively, “Releasees”), based on any failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, or sold by RBH.

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

In further consideration of the promises and agreements herein contained, Dr. 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 against RBH and Releasees and releases all claims against RBH and Releasees, 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, limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, or sold by RBH, against RBH and Releasees.

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

Dr. 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 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands or claims of Dr. Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, against RBH and Releasees, which arise out of alleged or actual exposures to any Proposition 65-listed chemicals in the Products manufactured, distributed, or sold by RBH.

### **5.4 Ricardo Beverly Hills, Inc.'s Release of Dr. Held**

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

## **6. POST EXECUTION ACTIVITIES**

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against RBH and Releasees under Proposition 65 as covered under this release. If requested in writing by RBH (within twelve months of the Effective Date), RBH at its sole option may ask Dr. Held to 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. If requested, Dr. Held agrees to reasonably cooperate with RBH and to 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, RBH 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 RBH to have Dr. Held file a complaint and seek a consent judgment. RBH will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by RBH within ten days after its receipt of monthly invoices from Dr. Held for work performed under this paragraph. Notwithstanding Section 5.2 above, In the event a third party were to appeal the entry of a Consent Judgment sought pursuant to this Section 6.0, Dr. Held and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

**7. 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 enforceable provisions remaining shall not be adversely affected.

**8. 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, preempted 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 require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then RBH shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve RBH from an obligation to comply with any pertinent state or federal toxics control law.

**9. 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 RBH:

Robert Dodson, President  
Ricardo Beverly Hills, Inc.  
16111 Canary Avenue  
La Mirada, CA 90638

with a copy to:

Trenton H. Norris  
Arnold & Porter LLP  
1 Embarcadero Center, Suite 2200  
San Francisco, CA 94111

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.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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



12. **MODIFICATION**

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

13. **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:**

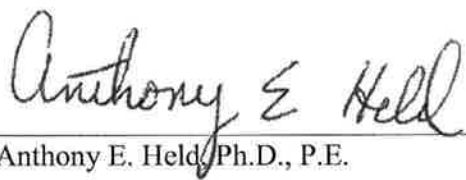
**APPROVED**

*By Anthony Held at 5:04 pm, Nov 29, 2011*

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

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

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



**AGREED TO:**

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

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

John Sapone, Vice President, Finance  
Ricardo Beverly Hills, Inc.

12. **MODIFICATION**

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

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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:**

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

Date: NOVEMBER 29, 2011

By: \_\_\_\_\_  
Anthony E. Held, Ph.D., P.E.

By:   
John Sapone, Vice President, Finance  
Ricardo Beverly Hills, Inc.