

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 RVC Enterprises LLC (“RVC”), with Held and RVC 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. RVC employs ten or more individuals 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 RVC distributed and/or sold in the state of California, jackets containing the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the state 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 jackets containing DEHP, including, but not limited to, the *Deréon Sin City Jacket, F101707OP (#8 83810 54363 5)* (“Products”) manufactured, sold, or distributed in California by RVC.

1.4 Notice of Violation

On September 20, 2011, Held served RVC and various public enforcement agencies with a document titled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that RVC was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn its 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

RVC denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 RVC 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 RVC of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by RVC. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of RVC under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 24, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date, RVC 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, RVC shall pay \$3,500 in civil penalties. The penalty payment shall be allocated according to 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. RVC shall issue submit its payment to: (a) "The Chanler Group in

Trust for OEHHA” in the amount of \$2,625; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$875. 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 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. RVC 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. RVC shall pay the total amount of \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to RVC’s attention, and negotiating a settlement in the public interest. RVC shall provide a separate 1099 form for its payment (EIN: 94-3171522), and shall deliver 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

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 RVC, of any violation of Proposition 65 that was or could have been asserted by Held against RVC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and to whom RVC 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 their failure to warn about alleged exposures to the Listed Chemical contained in the Products sold by RVC.

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 (collectively “Claims”). This release is limited to those Claims that were brought or could have been brought by Held against RVC and the Releasees for unwarned exposures to the Listed Chemical contained in the Products sold by RVC.

5.3 Held’s Individual Release of Claims

Held, in his individual capacity only, and *not* in his representative capacity, also 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 sold in California by RVC.

5.4 RVC's Release of Held

RVC 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 provision is deemed by a court to be unenforceable, the validity of the remaining provisions 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 RVC 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 RVC 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 RVC:

Victor Azrak, President
RVC Enterprises LLC
1384 Broadway, Floor 17
New York, NY 10018

with a copy to:

Kenneth R. Schachter, Esq.
Sills Cummis & Gross P.C.
One Rockefeller Plaza
New York, NY 10020

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, 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:

AGREED TO:

APPROVED

By Tony Held at 1:07 pm, Oct 07, 2011

Date: _____

Date: _____

By: *Anthony E. Held*
Anthony E. Held, Ph.D., P.E.

By: _____
Victor Azrak, President
RVC Enterprises LLC

with a copy to:

Kenneth R. Schachter, Esq.
Sills Cummis & Gross P.C.
One Rockefeller Plaza
New York, NY 10020

For Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
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AGREED TO:

AGREED TO:

Date: _____

Date: 10/7/11

By: _____

By: 

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

Victor Azrak, President
RVC Enterprises LLC