

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony Held, Ph.D., P.E., Sunless Incorporated and Mystic Tan, Inc.

This Settlement Agreement is entered into by and between Anthony Held, Ph.D., P.E., (hereinafter “Dr. Held”), Sunless Incorporated (hereinafter “Sunless”) and Mystic Tan, Inc. (hereinafter “Mystic”), with Dr. Held, Sunless, and Mystic collectively referred to as the “Parties.” 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. Sunless and Mystic each employ ten or more persons and are each 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 Sunless and Mystic have manufactured, distributed, and/or sold in the State of California cosmetic cases containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. 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 herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are limited to the cosmetic cases known and identified as *Mystic Tan Perfect Tan Kit Face (#8 90536 00246 9)*, containing the Listed Chemical, that are manufactured, imported, distributed, and/or sold in California by Sunless and Mystic. All such items shall be referred to herein as “Products.”

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

On or about December 30, 2010, Dr. Held served Sunless, Mystic, and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Sunless, Mystic, and such public enforcers with notice that Sunless and Mystic were alleged to be in violation of Proposition 65 for failing to warn consumers that the Products exposed users in California to the Listed Chemical. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Sunless and Mystic deny the material factual and legal allegations contained in Dr. Held’s Notice and maintain that all of the products they have manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Sunless and/or Mystic 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 Sunless and/or Mystic of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Sunless and Mystic. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Sunless and Mystic under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean September 30, 2011.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date, Sunless and Mystic shall do one of the following: (a) cease all sales, shipping, or distribution of the Products to entities in California or to entities which may offer the Products for sale in California; or (b) refrain from manufacturing, distributing, shipping, selling or offering to be shipped for sale in California any Products unless the products contain less than or equal to 1,000 parts per million of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

## **3. MONETARY PAYMENTS**

### **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be \$2,000. Civil penalties are 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 and the remaining 25% to Dr. Held.

Sunless and Mystic shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for the Office of Environmental Health Hazard Assessment" in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Anthony Held" in the amount of \$500, representing 25% of the total penalty.

Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued to Dr. Held

in the amount of \$500, whose address and tax identification number shall be furnished, upon request, three calendar days before payment is due. Payment shall be delivered by 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**

##### **4.1 Attorney Fees and Costs**

The Parties reached 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 § 1021.5, for all work performed in this matter. Under these legal principles, Sunless and Mystic shall pay the total of \$13,000 for fees and costs incurred as a result of investigating, bringing this matter to the attention of Sunless and Mystic, and negotiating a settlement in the public interest. Sunless and Mystic shall make a separate check payable to “The Chanler Group,” issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment by the Effective Date, to the following address:

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

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Dr. Held’s Release of Sunless and Mystic**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past

and current agents, representatives, attorneys, including, without limitation, The Chanler Group, 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) of any nature whatsoever (collectively "Claims") that were brought or could have been brought against Sunless, Mystic, or their subsidiaries or affiliates, and each of Sunless' and Mystic's downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees") that arise under Proposition 65, as such claims relate to Sunless' and Mystic's alleged failure to warn about exposures to DEHP contained in the Products. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Sunless and/or Mystic.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Sunless and/or Mystic and Sunless' and/or Mystic's Releasees with the requirements of Proposition 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by Sunless and/or Mystic.

## **5.2 Sunless' and Mystic's Release of Dr. Held**

Sunless and Mystic waive 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are 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 and/or the Listed Chemical, then Sunless and/or Mystic 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.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Sunless:

Scott Thomason, President  
Sunless Incorporated  
8909 Freeway Drive  
Macedonia, OH 44056

For Mystic:

Scott Thomason, President  
Mystic Tan, Inc.  
8909 Freeway Drive  
Macedonia, OH 44056

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.

**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)**

Dr. Held agrees to comply with the reporting form 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.

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**12. 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:**

**APPROVED**  
By Tony Held at 3:16 pm, Sep 19, 2011

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

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

**AGREED TO:**

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

By: \_\_\_\_\_  
Scott Thomason, President  
Sunless Incorporated  
Mystic Tan, Inc.



**12. 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.

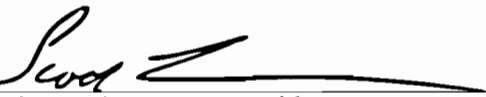
**AGREED TO:**

**AGREED TO:**

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

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

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

By:   
Scott Thomason, President  
Sunless Incorporated  
Mystic Tan, Inc.