

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, PhD., P.E. (“Held”) and Beaumont Designs, Inc. (“Beaumont”), with Held and Beaumont individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Beaumont supplied the Product to Costco Wholesale Corporation, and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65), and under Proposition 65, Beaumont has agreed to indemnify and hold Costco harmless against any claims with respect to the Product.

### 1.2 General Allegations

Held alleges that Beaumont manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC toiletry/cosmetic bags that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are limited solely to the *Stephanie Johnson 4-piece travel set, Itm./Art. 673891, W286-3-1, UPC #8 78584 00655 4*, which allegedly contained DEHP, and shall, where appropriate, be referred to as the “Products.”

### 1.4 Notice of Violation

On or about October 25, 2013, Held served Beaumont and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Beaumont violated Proposition 65 by failing to warn its customers and consumers in California that the

Products expose users to DEHP. 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**

Beaumont denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Beaumont believes possesses affirmative defenses, including based upon the statute of limitation and failure to comply with the Notice requirements in Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Beaumont 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 Beaumont of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Beaumont. This Section shall not, however, diminish or otherwise affect Beaumont'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 June 10, 2014.

## **2. INJUNCTIVE RELIEF**

### **2.1 Commitment to Reformulate Products**

Commencing on the Effective Date, and continuing thereafter, Beaumont commits that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products."

### **2.2 Reformulated Products**

Commencing on the Effective Date and continuing thereafter, Beaumont shall only manufacture for sale or purchase for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S.

Environmental Protection Agency testing methodologies 3580A and 8270C. Beaumont may utilize any other testing methodology allowed by state or federal agencies for the purpose of determining DEHP content in a solid substance to determine compliance with this Section. As of the Effective Date, Beaumont represents that it has completely discontinued the manufacture, sale, distribution of any of the Products.

### **2.3 Sales of Existing Products with Warnings**

Nothing in this Settlement Agreement shall preclude Beaumont from shipping and selling in California its existing inventory of Products. Commencing on June 10, 2014, Beaumont agrees that any Products that Beaumont manufactured prior to June 10, 2014, and which Beaumont directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Sections 2.1 and 2.2 will include a warning affixed to the packaging, labeling, or directly on each Product that states:

**WARNING:** This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.

## **3. MONETARY PAYMENTS**

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

In settlement of all the claims referred to in this Settlement Agreement, Beaumont shall pay a total of \$45,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

#### **3.1.1 Initial Civil Penalty**

Beaumont shall pay an initial civil penalty in the amount of \$15,000.00 on or before June 10, 2014. Beaumont shall issue two separate checks to: (a) “OEHHA” in the amount of

\$11,250.00 and (b) “The Chanler Group in Trust for “Anthony E. Held” in the amount of \$3,750.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

### **3.1.2 Final Civil Penalty**

Beaumont shall pay a final civil penalty of \$30,000.00 on or before November 30, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than November 15, 2014, an officer of Beaumont provides Held with written certification that, as of the date of such certification and continuing into the future, Beaumont has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Beaumont are Reformulated Products, or that Beaumont no longer manufactures, sells, and/or distributes the Products. Held must receive any such certification on or before November 15, 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Beaumont shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$22,500.00; and (b) “The Chanler Group in Trust for “Anthony E Held” in the amount of \$7,500.00.

### **3.2 Attorney 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. Beaumont 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 section 1021.5, for all work performed through the mutual execution of this agreement. Beaumont shall pay \$31,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Beaumont’s attention, and negotiating a settlement in the public interest. Beaumont shall make the check payable to “The

Chanler Group” and shall deliver payment on or before June 10, 2014, to the address listed in Section 3.3.1(a) below.

### **3.3 Payment Procedures**

#### **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Held, pursuant to Sections 3.1.1 through 3.1.2, shall be delivered to the following payment address:

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

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Held's Release of Beaumont**

This Settlement Agreement is a full, final, and binding resolution between Held and Beaumont of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Beaumont, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Beaumont directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers (including but not limited to Costco Wholesale Corporation), franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to DEHP contained in Products sold or distributed for sale by Beaumont in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Beaumont and Releasees, including, without limitation, all actions and causes of action now or at any other time in the past or future relating to the Products, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, sold, or distributed for sale in California by Beaumont prior to the Effective Date.

##### **4.2 Beaumont's Release of Held**

Beaumont, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and his attorneys and other representatives, for any and all actions taken or statements made by Held and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**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 Beaumont may provide written notice to Held of any asserted change in the law, and 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 sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Beaumont:

Carolyn Frederick, Esq.  
Peterson Russell Kelly, PLLC  
1850 Skyline Tower  
10900 N.E. 4th Street  
Bellevue, Washington 98004

For Held:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party may, from time to time, 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.

**9. POST-EXECUTION ACTIVITIES**

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

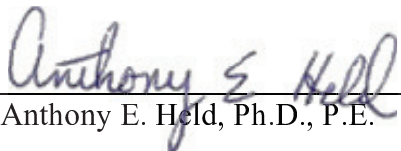
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: May 15, 2014

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

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

By: \_\_\_\_\_  
Beaumont Designs, Inc.



For Held:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent in accordance with this Section. All notices and communications sent under this Settlement Agreement shall take effect upon receipt.

**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.

**9. POST-EXECUTION ACTIVITIES**

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

**AGREED TO:**

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

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

**AGREED TO:**

Date: Siobhán Foody

By: SIOBHAN Foody  
Beaumont Designs, Inc.