

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 Chattem, Inc. (“Chattem”), with Held and Chattem each 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. Chattem 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Held alleges that Chattem manufactured, imported, sold, and/or distributed for sale in the state of California, sunscreen that contains benzophenone without first providing the clear and reasonable health hazard warning required by Proposition 65. Benzophenone is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are sunscreens containing benzophenone that were manufactured, sold, or distributed for sale in California by Chattem, including, but not limited to, *Bull Frog Mosquito Coast Sunscreen with Insect Repellant SPF 30, UPC #0 41167 33077 7* (collectively, “Products”).

1.4 Bull Frog Brand. Chattem represents that it sold all ownership interest and rights to the Bull Frog Brand and all Bull Frog-branded products (including all Products, if any) to a third party, Sun and Skin Care Research, LLC. (“SSCR”), in a transaction closing on February 6, 2013. Pursuant to a post-transaction supply agreement, Chattem supplied Products to SSCR until May 31, 2013. Chattem further represents that after May 31, 2013, Chattem has not manufactured, owned, sold, supplied, or distributed any Bull Frog-branded products, including all Products, if any.

1.5 Notice of Violation. On February 26, 2014, Held served Chattem, others and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Chattem violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.6 No Admission. Chattem 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. Nothing in this Settlement Agreement shall be construed as an admission by Chattem 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 Chattem of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Chattem. This section shall not, however, diminish or otherwise affect Chattem’s obligations, responsibilities, and duties under this Settlement Agreement.

1.7 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean August 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products. As described in Section 1.4, Chattem represents that it does not manufacture, own, sell, supply, or distribute any Bull Frog-branded products, including all Products, if any, and cannot affect the formulation of Products, if any. However, commencing on the Effective Date, and continuing thereafter, in the event Chattem does manufacture, ship, sell, or distribute for sale in California, Products, they shall qualify as Reformulated Products. For purposes of this Settlement Agreement, “Reformulated Products” are Products that contain no detectable amount of benzophenone when analyzed by an accredited laboratory pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent

methodologies utilized by state and federal agencies to determine benzophenone content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Chattem shall pay \$9,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Held. Chattem shall provide its civil penalty payment in two checks made payable to: (a) “OEHHA” in the amount of \$6,750; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$2,250. The civil penalty payments are to be delivered to Held and OEHHA, within five days of the Effective Date, at the addresses provided in section 3.3.1 and 3.3.2.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Chattem shall pay \$25,500 for all fees and costs incurred investigating, bringing this matter to the attention of Chattem’s management, and negotiating a settlement. The attorneys’ fees payment is to be delivered to Held, within five days of the Effective Date, at the address provided in section 3.3.1.

3.3. Payment Addresses.

3.3.1 Payment Addresses for Held and his Counsel. All payments and tax documentation required for Held and his counsel under this Settlement Agreement shall be delivered to the following address:

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

3.3.2 Payment Addresses for OEHHA. All payments and tax documentation required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) to one of the following addresses, as appropriate:

For United States Postal Delivery:

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

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

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

4. CLAIMS COVERED AND RELEASED

4.1 Held’s General Release of Chattem. This Settlement Agreement is a full, final, and binding resolution between Held and Chattem 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 Chattem, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Chattem directly or indirectly distributed or sold the Products, including, without limitation, its downstream distributors, wholesalers, purchasers, including SSCR, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to benzophenone from Products manufactured, sold, or distributed for sale in California by Chattem prior to June 1, 2013. However, the Parties

acknowledge that as to SCCR, this release shall only extend to Products manufactured, distributed, imported, sold and/or offered for sale by Chattem prior to June 1, 2013. This release is provided in Held's individual capacity and is not a release on behalf of public.

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 Chattem and Releasees, including, without limitation, all actions and causes of action, 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 benzophenone from Products manufactured, sold, or distributed for sale in California by Chattem prior to June 1, 2013. The Parties acknowledge that as to SCCR, this release shall only extend to Products manufactured, distributed, imported, sold and/or offered for sale by Chattem prior to June 1, 2013. This release is provided in Held's individual capacity and is not a release on behalf of public.

4.2 Held's Specific Release of Chattem. 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 Chattem, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (but not against Releasees), including, without limitation, all actions and causes of action, 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 benzophenone from Products manufactured, sold, or distributed for sale in California on or after June 1, 2013 and through the Effective Date. This release is provided in Held's individual capacity and is not a release on behalf of public.

4.3 Chattem's Release of Held. Chattem, 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 (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.

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 Chattem 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. NOTICE

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 at the following addresses:

For Chattem, Inc.:

George Gigounas, Esq.
DLA Piper LLP (US)
555 Mission Street
Suite 2400
San Francisco, California

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:

APPROVED

By Tony Held at 9:36 am, Aug 01, 2014

Date: _____

Date: July 30, 2014

By: _____

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

By: _____

W. H. W. Z.
Its: Vice President + General Counsel
Chattem, Inc.