

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Held and Houston's , Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held") and Houston's, Inc. ("Houston's"), with Held and Houston's collectively referred to 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. Houston's 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, California Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Held alleges that Houston's has manufactured, imported, distributed and/or sold in the State of California vinyl/PVC aprons containing 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 vinyl/PVC aprons, containing DEHP including, but not limited to, *Challenger Heavy Duty Vinyl Bib Apron, Style: 855A, UPC #0 88087 02690 8*, which are manufactured, imported, distributed, sold and/or offered for sale by Houston's in the State of California, hereinafter the "Covered Products."

1.4 Notice of Violation

On October 18, 2013, Held served Houston's and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that Houston's was in violation of California Health & Safety Code § 25249.6 for

failing to warn consumers that the Covered Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Houston's denies the material, factual and legal allegations contained in Held's Notice and maintains that all products that it has sold and distributed in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Houston's 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 Houston's 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 under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"Reformulated Products" are defined as those Covered Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million ("ppm")) 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 the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Houston's shall not manufacture, import, distribute, sell or offer the Covered Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

As of the Effective Date, Houston's shall provide clear and reasonable warnings for all Covered Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as Reformulated Products. 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. 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.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Houston's shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, Houston's may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Covered Products. Such instruction sent to Houston's' customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm:

[list products for which warning is required]

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Covered Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

(b) Mail Order Catalog and Internet Sales. In the event that Houston's sells Covered Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Houston's shall provide warnings for such Covered Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Covered Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains chemicals, including DEHP,
known to the State of California to cause birth defects
and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Houston's may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼
and offered for sale in this catalog contain,
chemicals, including DEHP, known to the State of California to
cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Houston's must provide a header or footer directing the consumer to the warning language and definition of the designated symbol. It is understood that this requirement will not be met until the issuance of Houston's next catalog in the winter of 2014-2015.

(ii) Internet Website Warning. A warning shall be given in conjunction with the sale of the Covered Products via the internet, which warning shall appear either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the

order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

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

In settlement of all the claims referred to in this Settlement Agreement, Houston's shall pay civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 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 Initial Civil Penalty

On, or before the Effective Date, Houston's shall pay an initial civil penalty in the amount of \$6,000.00. Houston's shall issue two separate checks to: (a) "OEHHA" in the amount of \$4,500; and (b) "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$1,500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Houston's shall pay a final civil penalty of \$10,000 on or before May 1, 2015. The final civil penalty shall be waived in its entirety, however, if, no later than April 15, 2015, an officer of Houston's provides Held with written certification that, as of the date of such certification and

continuing into the future, Houston's has either met the reformulation standard specified in Section 2.1 above, such that all Covered Products manufactured, imported, distributed, sold and offered for sale in California by Houston's are Reformulated Products or that Houston's will cease manufacturing, importing, distributing, selling and/or offering for sale the Covered Products in California, and in the event that Houston's resumes manufacturing, importing, distributing, selling and/or offering Covered Products for sale in California, they shall be Reformulated Products. Held must receive any such certification on or before April 15, 2015. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Houston's shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$7,500; and (b) "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$2,500.

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, 3.2 and 4 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 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Houston's shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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. Held 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 § 1021.5, for all work performed through the mutual execution of this agreement. Houston's shall pay \$20,500 for fees and costs incurred as a result of investigating, bringing this matter to Houston's' attention, and negotiating a settlement in the public interest. Houston's 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 on or before the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Held's Release of Houston's

This Settlement Agreement is a full, final and binding resolution between Held and Houston's of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself his past and current agents, representatives, attorneys, successors and/or assignees, against Houston's, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Houston's directly or indirectly distributes or sells Covered Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, imported, distributed, sold and/or offered for sale by Houston's in California before the Effective Date. 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 behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have 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 -- limited to and arising under Proposition 65 with respect to DEHP in the Covered Products manufactured, imported distributed, sold and/or offered for sale by Houston's before the Effective Date (collectively "claims"), against Houston's and Releasees. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held, in his individual capacity only and not in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under Section 1542 of the California Civil Code. This release is provided in Held's individual capacity and is not a release on behalf of public. The Parties acknowledge that the releases in this section do not extend to entities upstream from Houston's.

5.2 Houston's' Release of Held

Houston's, 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 Covered Products. Houston's acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Houston's expressly waives and relinquishes any and all rights and benefits which is may have under Section 1542 of the California Civil Code.

6. 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.

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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Covered Products, then Houston's 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 Covered Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Houston's 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 Houston's:

Scott M. Plamondon
Weintraub | Tobin
400 Capitol Mall, 11th Floor
Sacramento, California 95814
Attorneys for Houston's, Inc.

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 AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, 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

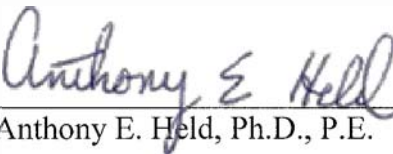
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: November 18, 2014

Date: 11/10/14

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

By: 
Name: Paul Henderson
Title: CFO
Houston's, Inc.