

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 Miller Manufacturing Company (“Miller”), with Held and Miller 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. Miller 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Miller manufactures, distributes, sells, and/or offers for sale stable forks with vinyl/PVC handle grips containing di(2-ethylhexyl)phthalate (“DEHP”) in California without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to 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 stable forks with vinyl/PVC handle grips containing DEHP including, but not limited to, the *Little Giant Professional Farm-Grade Easylift Ergonomic Durafork, PDFERED, #164474, UPC #0 84369 00017 8*, which were manufactured, distributed, sold and/or offered for sale in California by Miller, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about August 16, 2013, Held served Miller and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Miller was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products exposed 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

Miller denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or 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 Miller 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 Miller of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Miller. This Section shall not, however, diminish or otherwise affect Miller'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 January 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, Miller shall not purchase, manufacture, cause to be manufactured, import, or cause to be imported any Product that will be sold or offered for sale in California, unless it is a "Reformulated Product." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA 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. For purposes of this agreement, "Accessible Components" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

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

In settlement of all the claims referred to in this Settlement Agreement, Miller shall pay a total of \$7,000 in 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

Miller shall pay an initial civil penalty in the amount of \$2,000 on or before the Effective Date. Miller shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Miller shall pay a final civil penalty of \$5,000 on or before March 15, 2014, The final civil penalty shall be waived in its entirety, however, if, no later than March 1, 2014, an officer of Miller provides Held with written certification that, as of the date of such certification and continuing into the future, Miller has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Miller are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Miller shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$3,750; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$1,250.

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 and 3.2, 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 and 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, Miller 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(b) 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. Miller shall pay \$21,000 for fees and costs incurred as a result of investigating, bringing this matter to Miller's attention, and negotiating a settlement in the public interest. Miller 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 Miller

This Settlement Agreement is a full, final and binding resolution between Held and Miller, 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 Miller, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Miller directly or indirectly distributes or sells 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 Products that were manufactured, distributed, sold, and/or offered for sale by Miller in California before the Effective Date.

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 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 Products manufactured, distributed, sold and/or offered for sale by Miller before the Effective Date, against Miller and Releasees.

5.2 Miller's Release of Held

Miller, 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. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Miller may ask Held, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with Miller and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Miller will reimburse Held and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. Miller shall remit payment to The Chanler Group at the payment address provided in Section 3.3.1 above. Such additional fees shall be paid by Miller within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

7. SEVERABILITY

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

8. 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.

9. 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:

To Miller:

Dan Ferrise, Chief Executive Officer
Miller Manufacturing Company
5481 St. Croix Trail, Suite 200
North Branch, MN 55056

To Held:

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

With copy to:

Kristine Boylan
Merchant & Gould
80 South Eighth Street
Minneapolis, Minnesota 55402

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.

10. 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.

11. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (f).

12. MODIFICATION

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

13. 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

Date:

By Tony Held at 11:58 am, Jan 07, 2014

Date: _____

By:

Anthony E Held

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

By: _____

Dan Ferrise, Chief Executive Officer
Miller Manufacturing Company

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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: 1/7/14 _____

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

By:  _____
Dan Ferrise, Chief Executive Officer
Miller Manufacturing Company