

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Allary Corporation (“Allary”) and Anthony Held, Ph.D., P.E. (“Held”), with Held and Allary collectively referred to as the “Parties.” Held is an individual residing in the State of 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. Allary 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 Allary has manufactured, distributed and/or sold in the State of California pouches with vinyl/PVC zipper pulls containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits 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 or other reproductive harm.

1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined as pouches with vinyl/PVC zipper pulls containing DEHP including, but not limited to, *Real Simple Solutions Sewing Kit*, UPC #4 44444 73009 1, manufactured, imported and/or distributed for sale in the State of California by Allary.

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1.4 Notices of Violation

On or about November 25, 2014, Held served Bed, Bath & Beyond, Inc. and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Bed, Bath & Beyond, Inc.’s failure to warn consumers that the Products exposed users in the State of California to DEHP.

On or about January 23, 2015, Held served Bed, Bath & Beyond, Inc., Allary, and various public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (the “Supplemental Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Bed, Bath & Beyond, Inc. and Allary’s failure to warn consumers that the Products exposed users in the State of California to DEHP. The Notice and Supplemental Notice are referred to collectively herein as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notices.

1.5 No Admission

Allary denies the material factual and legal allegations contained in Held’s Notices and maintains that all products that it has sold and distributed 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 Allary 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 Allary of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Allary. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Allary under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date the Settlement Agreement is signed by all Parties.

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2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Allary shall only manufacture or cause to be manufactured Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Settlement Agreement, “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts per million (“ppm”) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”) and diisononyl phthalate (“DINP”), when analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C. Products that are Phthalate Free are referred to hereinafter as “Reformulated Products.”

2.2 Product Warnings

After the Effective Date, Allary shall not sell, ship, or offer to be shipped for sale in California, Products containing DEHP unless such Products are (a) shipped with the clear and reasonable warnings set out in Sections 2.2.1 and 2.2.2, or (b) Reformulated Products as defined in Section 2.1 above.

Any warning issued for Products pursuant to Sections 2.2.1 and 2.2.2, below, 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(s) the warning applies, so as to minimize the risk of consumer confusion.

2.2.1 Warnings For Retail Store Sales

(a) **Product Labeling.** Allary may perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold in retail outlets in California by Allary or its agents, that states:

WARNING: This product contains chemicals known to the State of California to cause birth defects or other reproductive harm.

(b) **Point-of-Sale Warnings.** Allary may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that state:

WARNING: This product contains chemicals known to the State of California to cause birth defects or 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., Phthalate Free as defined in Section 2.1), the following statement must be used:¹

WARNING: The following products contain chemicals known to the State of California to cause birth defects or other reproductive harm:

[list products for which warning is required]

2.2.2 Warnings For Internet Sales

A warning may be given in conjunction with the sale of the Product to a California consumer via the Internet, provided it appears either: (i) on the same web page on which the Product is displayed; (ii) on the same web page as the order form for the Product; (iii) on the same page as the price for any Product; or (iv) 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 known to the State of California to cause birth defects or other reproductive harm.

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

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: Products identified on this page with the following symbol ▲ contain chemicals known to the State of California to cause birth defects or other reproductive harm.

2.3 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.2 shall not apply to Phthalate Free Products (as defined in Section 2.1).

3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Allary shall pay a total of \$2,500 in accordance with this Section within five (5) days of the Effective Date in one check made payable as follows: "Anthony Held, Client Trust Account". The penalty payment will be allocated by Held in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds being remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty being retained by Held. Allary shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

3.2 Representations

Allary represents that the sales data and other information concerning its Product sales information, knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to Held in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement Agreement and a material factor upon which Held relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, Held discovers and presents to Allary, evidence

demonstrating that the preceding representation and warranty was materially inaccurate, then Allary shall have 30 days to meet and confer regarding Held's contention. Should this 30 day period pass without any such resolution between Held and Allary, Held shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

3.3 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. 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. Allary shall pay \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to Allary's attention, and negotiating a settlement in the public interest. Allary shall tender a check payable to "The Chanler Group," within five (5) days of the Effective Date. Allary shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

3.4 Payment Procedures

All payments pursuant to Sections 3.1 and 3.3, 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

4. RELEASE OF ALL CLAIMS

4.1 Held's Release of Allary

This Settlement Agreement is a full, final, and binding resolution between Held and Allary of any violation of Proposition 65 that was or could have been asserted by Held on behalf of

herself, his past and current agents, representatives, attorneys, successors and/or assignees, against Allary, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Allary directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers, including Bed, Bath & Beyond, Inc. (“Releasees”), based on the alleged failure to warn about potential exposures to DEHP contained in the Products sold and/or offered for sale by Allary in the State of California before the Effective Date as set forth in the Notices.

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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Allary and Releasees, including, without limitation, all actions, 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 arising under Proposition 65 with respect to DEHP, DBP, BBP, and DINP in the Products sold and/or offered for sale by Allary before the Effective Date.

The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Allary.

4.2 Allary’s Release of Held

Allary waives any and all claims against 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 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.

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5. 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.

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 and/or DEHP, then Allary 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 Products are so affected.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (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 Allary:

Lisa Gittleman, Vice President
Allary Corporation
2204 Morris Ave., Suite 209
Union, NJ 07083

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.

8. COUNTERPARTS; FACSIMILE/PDF 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

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

11. AUTHORIZATION

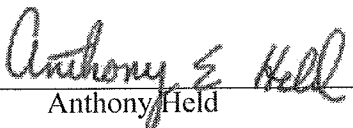
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: April 30, 2015

Date: _____

By: 
Anthony Held

By: _____
Lisa Gittleman, Vice President
Allary Corporation

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AGREED TO:

Date: _____

By: Anthony Held

AGREED TO:

Date: 4/30/2015

By: 
Lisa Gattlerman, Vice President
Allary Corporation