

# 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 Barron’s Educational Series, Inc. (“Barron’s”), with Held and Barron’s each individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Barron’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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Held alleges that Barron’s manufactures, sells, and/or distributes for sale in California, books with vinyl/PVC covers that contain the toxic chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Held alleges that Barron’s failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its books with vinyl/PVC covers.

### 1.3 Product Description

The products covered by this Settlement Agreement are books with vinyl/PVC covers containing DEHP that are manufactured, sold, and/or distributed for sale in California by Barron’s, including, but not limited to, the *Barron’s Coniferous Trees Pocket Guide*, ISBN 0-8120-4451-7, #9 780812 044515 (collectively, “Products”).

### 1.4 Notice of Violation

On June 20, 2014, Held served Barron’s and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Barron’s violated

Proposition 65 by failing to warn its customers and consumers in California that the Products it sold expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

**1.5 No Admission**

Barron's denies the material and legal allegations contained in the Notice and maintains that all of the products that it has 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 Barron's of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Barron's of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Barron's. This Section shall not, however, diminish or otherwise affect Barron's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" means January 5, 2015.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing within 60 days of the Effective Date and continuing thereafter, Barron's shall only purchase for sale or manufacture for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, Barron's agrees to pay \$13,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount remitted to Held.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, Barron's shall make an initial civil penalty payment of \$3,500. Barron's will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "Anthony E. Held, Client Trust Account" in the amount of \$875.

**3.1.2 Final Civil Penalty.** On March 1, 2015, Barron's shall pay a final civil penalty of \$10,000. The final civil penalty shall be waived in its entirety if, by February 15, 2015, an officer of Barron's provides Held's counsel with written certification that, as of the date of its certification, all of the Products sold or distributed for sale in California are Reformulated Products, and that it will continue to only offer Reformulated Products in California in the future. The option to provide a written certification in lieu of making the final civil penalty payment is a material term, and time is of the essence.

#### **3.2 Reimbursement of Held's Attorneys' 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, Barron's agrees to pay \$22,000 for all fees and costs incurred

investigating, bringing this matter to the attention of Barron's management, and negotiating a settlement in the public interest.

**3.3 Payment Procedures**

**3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments to Held and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses as appropriate:

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 Courier or Other Non-U.S. Postal Service Delivery:

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

**3.3.2 Proof of Payment to OEHHA.** Barron's agrees to provide Held with a copy of each penalty check sent to OEHHA, enclosed with its penalty payment(s) to Held, and delivered to the address provided in Section 3.3.1(a).

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

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

This Settlement Agreement is a full, final, and binding resolution between Held and Barron's of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, or assignees, against Barron's and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Barron's directly or indirectly distributes or sells Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP from Products manufactured, distributed, sold or offered for sale by Barron's before the Effective Date, as alleged in the Notice.

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 any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with regarding the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Barron's before the Effective Date.

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

Barron's, on its own behalf and on behalf of 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, 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 Barron's may 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. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Barron's:

Manuel Barron, Chairman and C.E.O.  
Barron's Educational Series, Inc.  
250 Wireless Boulevard  
Hauppauge, NY 11788

with copy to:

Gregory P. O'Hara, Esq.  
Nixon Peabody LLP  
2 Palo Alto Square, Suite 500  
3000 El Camino Real  
Palo Alto, CA 94306

For Held:

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

Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

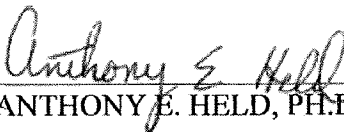
This Settlement Agreement may be modified only by written agreement of the Parties.

**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.

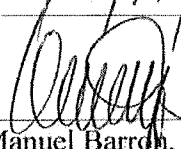
**AGREED TO:**

Date: January 30, 2015

By:   
ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**

Date: 1/30/2015

By:   
Manuel Barron, Chairman and C.E.O.  
BARRON'S EDUCATIONAL SERIES, INC.