

# 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 Classic Accessories, Inc. (“Classic Accessories”), with Held and Classic Accessories 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. Classic Accessories 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Held alleges that Classic Accessories manufactures, sells, and distributes for sale in California, motorcycle tank bags with vinyl/PVC components containing the phthalate 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 Classic Accessories failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its motorcycle tank bags with vinyl/PVC components.

### 1.3 Product Description

The products covered by this Settlement Agreement are motorcycle tank bags with vinyl/PVC components containing DEHP that are manufactured, sold or distributed for sale in California by Classic Accessories, including, but not limited to, the *Classic Motogear Extreme Motorcycle Tank Bag*, #73717, UPC #0 52963 73717 (“Products”).

### 1.4 Notice of Violation

On April 29, 2015, Held served Classic Accessories and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Classic Accessories violated Proposition 65 when it failed to warn its customers and consumers in California of the

health hazards associated with exposures to DEHP from the Products. 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**

Classic Accessories denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Classic Accessories 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 Classic Accessories of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Classic Accessories. This Section shall not, however, diminish or otherwise affect Classic Accessories' 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, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

### **2.1 Reformulated Products**

Commencing on November 31, 2015 and continuing thereafter, Classic Accessories agrees to only manufacture for sale or purchase for sale in or into California: (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in each component analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

Classic Accessories agrees that, as of the Effective Date, all Products it sells and/or distributes in or into California (except for those Products already in the stream of commerce, as provided in Section 2.3, below) which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. Classic Accessories further agree that the warnings will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag or directly to a Product sold in California and containing the following statement:

**WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.**

## **2.3 Grace Period for Existing Inventory of Products**

Classic Accessories represents that, after receiving the Notice, it implemented a health hazard warning for the Products. Held agrees that, until it exhausts its current inventory of Products, Classic Accessories may continue to sell and offer for sale in California those Products labeled with the following statement: "WARNING: This Product can expose users to chemical phthalates, known to the state of California to cause cancer, birth defects, and/or other reproductive harm."

## **3. ENFORCEMENT**

### **3.1 Notice of Breach**

Held may seek to enforce the terms and conditions of this Settlement Agreement and the requirements of Section 2 by issuing Classic Accessories a written Notice of Breach, prior to pursuing other remedies available at law. For each Product, the Notice of Breach shall include: (1) the date(s) of the alleged violation(s) or breach, (2) the location at which the Product was purchased, (3) a clear description of the Product, including images of the Product

and any relevant packaging or labeling, together with the Product model number, UPC number or SKU, and (4) all test data obtained by Held regarding the Product, including, without limitation, supporting documentation, laboratory reports, quality assurance and/or quality control reports associated with the testing of the Product. Any Product test data shall be based on the same, or comparable, testing methods specified in Section 2.

### **3.2 Meet and Confer; Opportunity to Cure**

Held and Classic Accessories agree to meet and confer for a period of not less than thirty (30) days from Classic Accessories' receipt of the Notice of Breach regarding Held's allegations and potential informal resolutions of same.

Classic Accessories will have an opportunity to cure the breach identified in the Notice of Breach within the meet and confer period, or within such a reasonable time as may be required to cure the breach, provided: (a) acts to cure the breach are commenced within 45 days; (b) Classic Accessories clearly communicates to Held all actions taken to cure the breach; (c) Held agrees with Classic Accessories' efforts to cure; and (d) the acts to cure the breach are thereafter diligently pursued to completion. If Classic Accessories fails to correct the breach to Held's reasonable satisfaction and the Parties cannot resolve the dispute informally, Held may pursue any remedies available to him under law to enforce the terms and conditions of this Settlement Agreement.

## **4. MONETARY SETTLEMENT TERMS**

### **4.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Classic Accessories agrees to pay \$9,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Held. Held's counsel shall be responsible for delivering OEHHA's portion of any civil penalty payment(s) made under this

Settlement Agreement to OEHHA.

#### **4.1.1 Initial Civil Penalty Payment**

Within 10 days of the Effective Date, Classic Accessories shall make an initial civil penalty payment of \$3,000. It shall deliver its payment in a single check made payable to “Anthony E. Held, Client Trust Account.”

#### **4.1.2 Final Civil Penalty Payment; Waiver for Complete Reformulation**

On April 1, 2016, Classic Accessories shall make a final civil penalty payment in the amount of \$6,000. Pursuant to Title 11 California Code of Regulations § 3203(c), Held agrees that the final civil penalty will be waived in its entirety if, no later than March 15, 2016, Classic Accessories provides Held’s counsel with a signed declaration certifying that all of the Products it is shipping for sale or distributing for sale in California are Reformulated Products as defined by Section 2, and that Classic Accessories will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying completion of reformulation in lieu of making the final civil penalty payment is a material term of this Settlement Agreement, and time is of the essence.

#### **4.2 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 § 1021.5 for all work performed in this matter. Under these legal principles, within 10 days of the Effective Date, Classic Accessories agrees to pay \$25,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Classic Accessories’ management, and negotiating a settlement in the public interest.

#### **4.3 Payment Address**

All payments 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

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**5. CLAIMS COVERED AND RELEASED**

**5.1 Held's Release of Classic Accessories**

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and not on behalf of the public, and Classic Accessories, 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, and assignees, against Classic Accessories, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Classic Accessories directly or indirectly distributes or sells Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by Classic Accessories in California before the Effective Date.

In further consideration of the promises and agreements herein, Held, as an individual and not on behalf of the public, on behalf of himself, an 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 respect to exposures to DEHP from Products manufactured, distributed, sold and/or offered for sale by Classic Accessories before the Effective Date.

The releases provided by Held under this Settlement Agreement are provided solely on Held's own behalf and not on behalf of the public in California.

**5.2 Classic Accessories' Release of Held**

Classic Accessories, 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 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.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 as to the Products, then Classic Accessories 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.

**8. NOTICE**

Unless specified herein, all correspondence and notice 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 Classic Accessories:

Jacob Engelstein, President  
Classic Accessories, Inc.  
22640 68<sup>th</sup> Avenue South  
Kent, WA 98032

For Held:

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

With a copy to:

Julie Schwartz  
Perkins Coie, LLP  
3150 Porter Dr.  
Palo Alto, CA 94304-1212

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.

**9. 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.

**10. 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 § 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: 12/11/2015

Date: 11.17.15

By:

ANTHONY E HELD

By:

Jacob Engelstein, President  
CLASSIC ACCESSORIES, INC. CEO