

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 The Keeney Manufacturing Company (“Keeney”) with Held and Keeney 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. Keeney 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 Keeney manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, tubes containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are tubes containing lead, that are manufactured, sold and/or distributed for sale in California by Keeney, including, but not limited to, *Keeney Anti-Siphon Mini Pilot Fill Valve (Tube), K830-15, UPC #0 46224 03410 0* (collectively, “Products”).

1.4 Notice of Violation

On January 27, 2017, Held served Keeney and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Keeney violated Proposition 65 when it failed to warn its customers and consumers in

California that the Products expose users to lead. 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

Keeney denies the material, factual, and legal allegations contained in the Notice and Keeney 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 Keeney 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 Keeney of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Keeney. This Section shall not, however, diminish or otherwise affect Keeney'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 June 30, 2017.

2. INJUNCTIVE TERMS: REFORMULATION AND WARNINGS

2.1 Commitment to Provide Reformulated Products or Warnings

Commencing on the Effective Date and continuing thereafter, Keeney shall only purchase for sale or manufacture for sale in California, (a) "Reformulated Products" as defined by Section 2.2; or (b) Products sold with a clear and reasonable warning in California in accordance with Section 2.3.

2.2 Reformulated Products

"Reformulated Products" are Products that: (a) contain no more than 90 parts per million ("ppm") lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; and (b)

yield no more than 1.0 microgram (“ug”) of lead when a wipe is applied to all surfaces according to NIOSH Test Method No. 9100.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Keeney that are not Reformulated Products, Keeney will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Keeney further agrees that any warning used will be prominently placed in relation to the Product 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 purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying these criteria shall consist of a warning affixed directly to a Product or its accompanying labeling or packaging sold in California that states:

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

OR

WARNING: Reproductive Harm -
www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Keeney agrees to pay \$2,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 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, and

delivered to the address in Section 3.3 herein. Within five days of the Effective Date, Keeney will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875 and (b) “Anthony E. Held, Ph.D., P.E, Client Trust Account” in the amount of \$625. Held’s counsel will deliver OEHHA’s portion of the penalty paid under this Settlement Agreement.

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, within five days of the Effective Date, Keeney agrees to pay \$17,000 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 Keeney’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

Within five days of the Effective Date, all payments required by 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

4. CLAIMS COVERED AND RELEASED

4.1 Held’s Release of Keeney

This Settlement Agreement is a full, final and binding resolution between Held and Keeney, of any violation of Proposition 65 that was or could have been asserted by Held on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against Keeney, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Keeney directly or indirectly distributes or sells

Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged failure to warn about exposures to lead in Products sold or distributed for sale by Keeney prior to the Effective Date.

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 respect to the failure to warn about exposures to lead from Products sold or distributed for sale by Keeney before the Effective Date. The releases provided by Held under this Settlement Agreement are provided solely on Held’s behalf and are not releases on behalf of the public.

4.2 Keeney’s Release of Held

Keeney 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining enforceable 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 Keeney 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 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 Keeney:

Stuart Holden Jr., President
The Keeney Manufacturing Company
1170 Main Street
Newington, CT 06111

For Held:

Attn: 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: 6/27/2017

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

AGREED TO:

Date: *6/26/17*

By: *Bruce J. V8/Carroll*
The Keeney Manufacturing Company