

SETTLEMENT AGREEMENT



1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Nuvue Products

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Nuvue Products (“Nuvue”) with Held and Nuvue individually referred to as a “Party” and, collectively, as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Nuvue supplied the vinyl/PVC greenhouse covers at issue in Held’s December 13, 2017 60-Day Notice of Violation to The Home Depot, Inc. (“Home Depot”) and has agreed to settle the claims that Held alleged against Home Depot with respect to the Products, as defined in Section 1.3 below, pursuant to Section 1.5.

1.2 General Allegations

Held alleges that that vinyl/PVC greenhouse covers that Nuvue manufactures, imports, distributes and sells to The Home Depot and that Home Depot thereafter sells and/or distributes for sale in California do not comply with the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65), because they contain di(2-ethylhexyl)phthalate (DEHP), in levels Held alleges require a warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

This Settlement Agreement is defined as, and specifically limited to, the *Pop-UP Greenhouse, Part #24042, UPC #0 39996 24042 8* that are manufactured, imported, sold and/or distributed for sale by Nuvue to Home Depot and offered for sale to customers in the State of California.

1.4 Notice of Violation

On December 13, 2017, Held served Home Depot and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Home Depot violated Proposition 65 when they failed to warn their customers and consumers in California that the Product 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

Nuvue denies the material, factual and legal allegations contained in the Notice and maintains that all products sold and distributed in California, including the Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Nuvue (1) of any fact, finding, conclusion, issue of law or violation of law; or (2) that it is a "person in the course of doing business" as that term is defined in California Health & Safety Code § 25249.11(b). This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 30, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Injunctive Relief

Commencing on the Effective Date and continuing thereafter, Nuvue shall not import, distribute, sell or offer the Product for sale in the State of California unless they are either: (a) Reformulated Products, pursuant to the standards delineated in Section 2.2; or (b) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 and 2.4.

2.2 Reformulation Standards


"Reformulated Products" are defined as Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e. any component



that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings: Definition, Usage & Methods of Compliance

Commencing on or before the Effective Date and continuing thereafter, for all Products sold or offered for sale in the State of California that do not meet the Reformulation Standard, Nuvue agrees to provide clear and reasonable warnings in accordance with Title 27 California Code of Regulations, Article 6 “Clear and Reasonable Warnings” (§§ 25600 – 25607.31), as amended from time to time. Each warning 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. The warning shall consist of one of the following statements:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

Nuvue shall affix one of the foregoing warnings directly to the Product label or otherwise on each Product provided for sale to consumers or customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic



material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

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, Nuvue agrees to pay a total of \$3,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount retained by Held.

Nuvue will deliver its payment on or before the Effective Date, in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Anthony E. Held, Client Trust Account" in the amount of \$750. Held's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of Attorneys' 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 the issue to be resolved after the Parties finalized the material terms of the agreement. Shortly after negotiating and finalizing the other settlement terms, Nuvue expressed a desire to resolve Held's fees and costs. The Parties then negotiated a resolution of 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, Nuvue shall reimburse Held and his counsel \$27,000. Nuvue's payment shall be delivered to the address in Section 3.3, on or before the Effective Date, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and

costs incurred by Held in investigating, bringing this matter to Nuvue's attention and negotiating a settlement of the matter.

3.3 Payment Address

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 Nuvue

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public in California, and Nuvue, 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 Nuvue, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Nuvue directly or indirectly distributes or sells the Product, including, but not limited to, downstream distributors, wholesalers, customers, retailers (including, without limitation, The Home Depot), franchisees, cooperative members, and licensees (collectively, Releasees), based on their alleged or actual failure to warn about exposures to DEHP contained in Products sold or distributed for sale by Nuvue in California prior to the Effective Date. Held agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in the Product sold after the Effective Date.

In further consideration of the promises and agreements herein contained, Held as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Held's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims

that Held 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products sold and/or offered for sale by Nuvue prior to the Effective Date, against Nuvue and Releasees.

The releases in this Settlement Agreement are specifically limited to the Product sold by Nuvue to Home Depot and specifically exclude any other products not falling within the definition of "Product" set forth in Section 1.3. Nothing in this Section affects Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Nuvue's Product.

4.2 Nuvue's Release of Held

Nuvue, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Product.

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 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Product, then

Nuvue shall provide written notice to Held of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Nuvue from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Nuvue:

Douglas Ward, President
Nuvue Products
1714 Broadway
Buffalo, NY 14212

With a Copy to:

Steven Taber, Esq.
Leech Tishman Fuscaldo & Lampl, Inc.
200 S. Los Robles Avenue, Suite 210
Pasadena, CA 91101

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 AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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 requirements referenced in Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

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

11. **AUTHORIZATION**

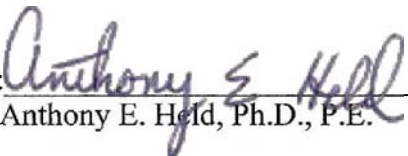
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 4/29/19

Date: 4/29/19

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

By: 
Douglas Ward, President
Nuvue Products