

# 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 Picnic At Ascot, Inc., (Picnic At Ascot) with Held and Picnic At Ascot 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. Held alleges that Picnic At Ascot 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 Picnic At Ascot manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, backpacks with vinyl/PVC handles that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). 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 covered by this Settlement Agreement are backpacks with vinyl/PVC handles containing DEHP, that are manufactured, sold and/or distributed for sale in California by Picnic At Ascot, including, but not limited to, the *London Picnic Backpack for Four w/Blanket, Item# 081X-L, #851-526-000, (UPC No. 6 55644 01294 2)* (collectively, the “Products”).

### 1.4 Notice of Violation

On April 30, 2014, Held served Picnic At Ascot and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that

Picnic At Ascot violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose 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**

Picnic At Ascot 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, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Picnic At Ascot 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 Picnic At Ascot of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Picnic At Ascot. This Section shall not, however, diminish or otherwise affect Picnic At Ascot'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 January 30, 2015.

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

Commencing on the Effective Date and continuing hereafter, Picnic At Ascot 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 in each accessible component when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance. Held agrees that Products meeting this reformulation standard do not require a warning under with Proposition 65 for DEHP.

### **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 or referred to in this Settlement Agreement, Picnic At Ascot agrees to pay \$8,000 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.

**3.1.1 Initial Civil Penalty.** By January 30, 2015, Picnic At Ascot shall pay an initial civil penalty of \$2,000. Picnic At Ascot will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Anthony E. Held Client Trust Account” in the amount of \$500.

**3.1.2 Final Civil Penalty.** On February 15, 2015, Picnic At Ascot shall pay a final civil penalty of \$6,000. The final civil penalty shall be waived in its entirety if, no later than February 1, 2015, an officer of Picnic At Ascot provides Held’s counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Settlement Agreement 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 payable 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, Picnic At Ascot agrees to pay a total of \$21,500 to Held and his counsel by January 30, 2015, in the form of a check made payable to “The Chanler Group” for any and all fees and costs incurred investigating, bringing this matter to the attention of Picnic At Ascot’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 and tax documentation required for 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 and tax forms required for 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.** Picnic At Ascot agrees to provide Held with a copy of each penalty check sent to OEHHA, enclosed with Picnic At Ascot’s penalty payment(s) to Held.

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

##### **4.1 Held's Release of Picnic At Ascot**

This Settlement Agreement is a full, final and binding resolution between Held and Picnic At Ascot, 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/or assignees, against Picnic At Ascot, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Picnic At Ascot directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including but not limited to Recreational Equipment, Inc.), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the alleged failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale by Picnic At Ascot prior to the Effective Date. The penalties, reformulation commitment, and attorneys' fees paid by Picnic At Ascot in connection with this Settlement Agreement are intended to resolve all issues concerning any alleged violations of Proposition 65 concerning DEHP in the Products. Held agrees that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to DEHP in the Products.

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 limited to, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products manufactured, sold and/or distributed for sale by Picnic At Ascot prior to

the Effective Date (the “Claims”). 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.

Held, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and not in any representative capacity, further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, as such Claims relate to the failure to warn about exposures to DEHP in the Products manufactured, distributed and/or sold by Picnic at Ascot prior to the Effective Date. Held further acknowledges that he is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on him by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters herein.

#### **4.2 Picnic At Ascot’s Release of Held**

Picnic At Ascot 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.

Picnic at Ascot further acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Picnic at Ascot, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters herein.

**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 Picnic At Ascot 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 otherwise 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 Picnic At Ascot:

Paul Whitlock, President  
Picnic At Ascot, Inc.  
3237 West 131<sup>st</sup> Street  
Hawthorne, CA 90250

with a copy to:

James Robert Maxwell, Esq.  
Rogers Joseph O'Donnell, PC  
311 California Street, 10<sup>th</sup> Floor  
San Francisco, CA 94104

For Held:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
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**

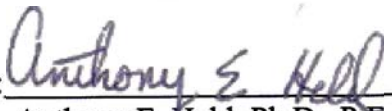
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.



conditions of this Settlement Agreement.

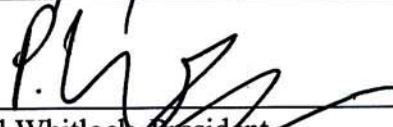
**AGREED TO:**

Date: January 21, 2015

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

**AGREED TO:**

Date: 1/16/2015

By:   
Paul Whitlock, President  
Picnic At Ascot, Inc.