

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 Tweezerman International, LLC ("Tweezerman"), with Held and Tweezerman each 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. Tweezerman 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, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Held alleges that Tweezerman manufactures, imports, sells, or distributes for sale in the state of California, an eyelash curler product that contains vinyl/PVC Eyelash Curler Grips, that in turn contain Diisononyl phthalate ("DINP") without first providing the clear and reasonable health hazard warning required by Proposition 65.

1.3 Product Description

The products covered by this Settlement Agreement are set forth on Exhibit A attached hereafter. (the "Products").

1.4 Notice of Violation

On August 10, 2015, Held served Tweezerman and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Tweezerman violated Proposition 65 when it failed to warn its customers and consumers in California that certain Products expose users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

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1.5 No Admission

Tweezerman denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, 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 Tweezerman of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tweezerman of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Tweezerman. This section shall not, however, diminish or otherwise affect Tweezerman'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 15, 2016.

2. INJUNCTIVE RELIEF

2.1 Cessation of Sales

Tweezerman represents that due in part to the receipt of Held's Notice, it discontinued all sales of the Products in California as of August 27, 2015.

2.2 Reformulated Products

Commencing no later than June 15, 2016, and continuing thereafter, Tweezerman shall only sell, ship for sale or distribute for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products (as defined herein) that incorporate vinyl/PVC Eyelash Curler Grips as an accessible component (i.e. any component that may be touched or handled during a reasonably foreseeable use) that contain DINP in concentrations less than 0.1 percent (1,000 parts per million ("ppm")) 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 DINP content in a solid substance.



2.4 Sell-Through Period

Tweezerman's Products manufactured and distributed for retail sale prior to the Effective Date shall be subject to the release of liability pursuant to Section 4 of this Settlement Agreement with respect to Tweezerman's obligation to reformulate Products, without regard to when such Products were, or are in the future, sold to consumers, whether by internet sales or any other means.

3. MONETARY SETTLEMENT TERMS

3.1 Payment into California Safe Drinking Water and Toxic Enforcement Fund Pursuant to Health & Safety Code §25249.12(e).

In settlement of all the claims referred to in this Settlement Agreement, Tweezerman shall pay \$3,000. The aforementioned payment shall be allocated according to California Health & Safety Code Section 25249.12(e) as follows: 75% (\$2,250) shall be remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") for deposit into the Safe Drinking Water and Toxic Enforcement Fund and the remaining 25% (\$750) shall be paid to Held. Tweezerman shall issue a check to: "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$3,000. Of this amount, the Chanler Group shall remit \$2,250 to OEHHA, per the terms above. Held and/or The Chanler Group shall be solely responsible for the payment to OEHHA once received from Tweezerman. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Held's Attorney 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, Tweezerman shall pay \$22,500 for all fees and costs through execution of this Settlement Agreement, including fees and costs incurred investigating, bringing this matter to the attention of Tweezerman's management, and negotiation of this settlement.

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3.3 Payment Procedures

All payments under this Settlement Agreement are due within ten (10) days of the execution of this agreement, and 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 Tweezerman

This Settlement Agreement is a full, final, and binding resolution between Held, as an individual and *not* on behalf of the public, and Tweezerman of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Tweezerman, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tweezerman directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to DINP from Products manufactured, sold or distributed for sale in California by Tweezerman prior to the Effective Date, as alleged in the Notice. The Parties acknowledge that this release shall not extend to entities upstream of Tweezerman.

In further consideration of the promises and agreements herein contained, Held, as an individual and *not* on behalf of the public, and on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Tweezerman and Releasees, 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, without limitation, investigation

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fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DINP from the Products manufactured, sold, or distributed for sale in California by Tweezerman prior to the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DINP from the Products as alleged in the Notice. The releases in Section 4.1 are provided in Held's individual capacity and are not releases on behalf of the public.

4.2 Tweezerman's Release of Held

Tweezerman, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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 Products.

4.3 Mutual California Civil Code section 1542 Waiver

Held in his individual capacity only and not in any representative capacity, and Tweezerman, each on his/its own behalf, and on behalf of his/its agents, attorneys, representatives, successors and assigns, also provides a general release which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held or Tweezerman of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of any alleged violations of Proposition 65 with respect to the Products sold by Tweezerman, as set forth in the Notice, or as to Held or Held's counsel in connection with investigating the claims and the Products that are the subject of this Settlement Agreement. Held and Tweezerman each acknowledge and represent that he/it is familiar with Section 1542 of the California Civil Code, 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 and Tweezerman each expressly acknowledge and hereby waive the provisions of Section 1542 of the California Civil Code.

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. DINP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, including the delisting of DINP, then Tweezerman may provide written notice to Held of any asserted change in the law, and with the exception of sections 3.1 and 3.2 above, have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Product is 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: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any Party by the other at the following addresses:



For Tweezerman:

Debra J. Albin-Riley, Esq.
Arent Fox LLP
Gas Company Tower
555 West Fifth Street, 48th Floor
Los Angeles, CA 90013

For Held:

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

Any Party may, from time to time, specify in writing to the other Party 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. **POST-EXECUTION ACTIVITIES**

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

10. **DISPUTE RESOLUTION**

Prior to bringing any action to enforce any requirement of this Settlement Agreement, Held shall provide Tweezerman with written notice of the grounds for such allegation together with supporting information as well as a complete demand for the relief sought. The Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve the matter informally, including providing Tweezerman with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, Held may file a motion, notice or any other appropriate request for relief.



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:

AGREED TO:

Date: 6/23/2016

Date: 7/8/2016

By: 

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

By: 

Juergen Bosse, CEO
Tweezerman International, LLC



Frank Stottem, CFO & COO