

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Nina Footwear Corp.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Dr. Held”), and Nina Footwear Corporation (“Nina”), with Dr. Held and Nina collectively referred to as the “Parties.”

1.2 General Allegations

Dr. Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Nina employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

Dr. Held alleges that Nina has manufactured, distributed and/or sold in the State of California children’s fashion accessories and bags containing children’s apparel containing 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 cancer, birth defects and other reproductive harm. DEHP is referred to herein as the “Listed Chemical.”

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as children’s fashion accessories and bags containing children’s apparel, containing the Listed Chemical including, but not limited to, *Nina Kids Starfish Blue Jelly In Bag*, (#0 93412 23582 9). All such items shall be referred to herein as the “Products.”

1.4 Notices of Violation

On February 12, 2010 and July 23, 2010, Dr. Held served Nina and various public enforcement agencies with documents entitled “60-Day Notice of Violation” and “Supplemental 60-Day Notice of Violation,” respectively, (collectively, the “Notices”) that provided Nina and such public enforcers with notice that alleged that Nina was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Nina denies the material, factual and legal allegations contained in Dr. Held’s Notices and maintains that all 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 Nina of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Nina of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Nina. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Nina under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 15, 2010.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1. Reformulation Commitment: Commencing on the Effective Date, Nina shall not ship, sell or offer to be shipped for sale in California any Product unless it is "DEHP Free". For

purposes of this Settlement Agreement, DEHP Free shall mean Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million (“ppm”)) when analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Nina shall pay \$1,000 in civil penalties to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided by California Health & Safety Code § 25249.12(d). Nina shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment (“The Chanler Group in Trust for OEHHA”) in the amount of \$750 representing 75% of the total penalty and (b) one check to “The Chanler Group in Trust for Dr. Held” in the amount of \$250 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Dr. Held, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before October 15, 2010, to the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Dr. Held and his counsel under

the private attorney general doctrine and contract law. Under these legal principles, Nina shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to Nina's attention, and negotiating a settlement in the public interest. Nina shall pay Dr. Held and his counsel \$4,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered on or before October 15, 2010, to the following address:

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

Nina shall issue a separate 1099 for fees and cost paid to The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Release of Nina

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Nina and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,

users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively “Nina Releasees”). This release is limited to those claims that arise under Proposition 65, or are contingent upon violations of Proposition 65, as such claims relate to Nina’s alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

5.2 Nina’s Release of Dr. Held

Nina waives any and all claims against Dr. Held, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) prior to the Effective Date by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining 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 Nina may provide written notice to Dr. 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. Nothing in this Settlement Agreement shall be interpreted to relieve

Nina from any obligation to comply with any pertinent state or federal toxics control law.

8. FILING THIS SETTLEMENT IN COURT.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Nina under Proposition 65 as covered under this release. Within eighteen (18) months of the Effective Date, Nina may ask Held to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested by Nina, Held agrees to reasonably cooperate with Nina and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. To the maximum extent feasible, Nina's counsel will draft and prepare all documentation required to support the entry of a consent judgment. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by Nina to have Held file the documents necessary for a court to approve this Settlement Agreement. The parties anticipate that at least a complaint, a motion for Court approval of the Parties' Proposition 65 Settlement, and a "Stipulation And Proposed Order Re: Consent Judgment," among other documents, to be drafted by Nina, will need to be filed. So long as the documents described above in this paragraph have been filed with the Court, pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Nina will reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$10,000. Nina will remit payment to The Chanler Group, at the address set forth in Section 4, above, within 15 days of receiving an invoice from Dr. Held and/or his counsel.

9. NOTICES

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

For Nina:

Malcolm C. Weiss, Esq.
Hunton & Williams LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

For Dr. 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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Dr. Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

12. MODIFICATION

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

13. **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: Anthony E Held

AGREED TO:

Date: 10/6/10

By: **APPROVED**
By Tony Held at 11:39 pm, Oct 11, 2010
Anthony E. Held, Ph.D., P.E.

By: William J Taylor
WILLIAM J TAYLOR, ~~President~~ CHIEF FINANCIAL OFFICER
Nina Footwear Corporation