

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony E. Held, Ph.D., P.E., and H2O Plus, LLC

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (hereinafter “Held”), and H2O Plus, LLC (hereinafter, “H2O”), with Held and H2O collectively referred to as the “Parties.”

### 1.2 General Allegations

Held asserts that he 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. H2O 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 §§ 25249.5 *et seq.* (“Proposition 65”).

Held alleges that H2O has manufactured, distributed and/or sold in the State of California bags/cases for toiletries containing Di(2-ethylhexyl)phthalate without the requisite Proposition 65 warning. Di(2-ethylhexyl)phthalate is listed pursuant to Proposition 65, as a chemical known to the State of California to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate is referred to herein as the “Listed Chemical.”

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as bags/cases for toiletries including, but not limited to: ~H2O+ Sea Marine Must-Haves, #8084 (#7 64505 08084 3). All such items shall be referred to herein as the "Products."

### **1.4 Notices of Violation**

On June 3, 2010, Held served H2O and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided H2O and such public enforcers with notice that alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the noticed products exposed users in California to the Listed Chemical. To the best of the parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

### **1.5 No Admission**

H2O denies the material factual and legal allegations contained in Held's Notice 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by H2O 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 H2O of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by H2O. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of H2O under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 20, 2010.

**2. INJUNCTIVE RELIEF – REFORMULATION**

Commencing on the Effective Date, H2O shall not manufacture, distribute, ship, sell or offer to be shipped for sale in California any Products unless such Product is Phthalate Free, as set forth below. For purposes of this Agreement, “Phthalate Free” products shall mean products containing less than or equal to 1,000 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

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

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all the claims referred to in this Settlement Agreement, H2O shall pay \$3,000 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 (“OEHHA”) and the remaining 25% of these penalty monies remitted to Held as provided by California Health & Safety Code §25249.12(d). H2O 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 \$2,250 representing 75% of the total penalty and (b) one check to “The Chanler Group in Trust for Held” in the amount of \$750 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 Held, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. Payment shall be delivered to Dr. Held's counsel on or before the Effective Date, at 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 Held and his counsel under the private attorney general doctrine and contract law. Under these legal principles, H2O shall reimburse Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to H2O's attention, and negotiating a settlement in the public interest. H2O shall pay Held and his counsel \$26,000 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 the Effective Date, at the following address:

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

H2O 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 H2O and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, The Chanler Group, 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 H2O 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 "H2O 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 H2O's alleged failure to warn about exposures to or identification of DEHP contained in the Products.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by H2O and H2O Releasees with the requirements of

Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by H2O.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against H2O or the Releasees under Proposition 65 as covered under this release. If requested in writing by H2O (within twelve months of the Effective Date), Held shall file a Complaint and seek approval of this Settlement Agreement through a court approved Settlement Agreement incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law, and Held shall reasonably cooperate with H2O and use best efforts and that of his counsel to support the entry of a Settlement Agreement incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, H2O 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 \$15,000. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by H2O to have Held file a Complaint and seek a Settlement Agreement. H2O will remit payment to The Chanler Group, at the address set forth in Section 8 below. Such additional fees shall be paid by H2O within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

## **5.2 H2O's Release of Held**

H2O waives any and all claims against Held, 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 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 H2O shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve H2O from any obligation to comply with any pertinent state or federal toxics control law.

**8. 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 H2O:

Bob Seidl, Chief Executive Officer  
H2O Plus, LLC  
845 West Madison Street  
Chicago, IL 60607

With copies to:

Melissa Jones, Esq.  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

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.

**9. 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.

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

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

11. **MODIFICATION**

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

12. **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:

**APPROVED**

Date: **By Tony Held at 9:13 am, Oct 20, 2010**

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Anthony E. Held*

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

By: \_\_\_\_\_

Bob Seidl, Chief Executive Officer  
H2O Plus, LLC

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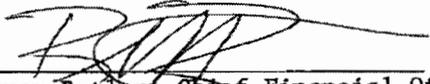
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 10-6-2010

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

By:   
Bryan Butler, Chief Financial Officer  
H2O Plus, LLC