

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Rich Brands, LLC

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (hereinafter “Held”), and Rich Brands, LLC (hereinafter, “Rich Brands”), with Held and Rich Brands collectively referred to as the “Parties.” 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. Rich Brands 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 Rich Brands has manufactured, distributed and/or sold in the State of California bags/cases for toiletries containing Di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 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. 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 *Vitabath Gift with Purchase*, #05570.004.000 (#0 46936 04749 8) bags/cases for toiletries, which Held alleges

contain the Listed Chemical, that are manufactured, imported, distributed, and/or sold in California by Rich Brands. All such items shall be referred to herein as “Products.”

1.4 Notices of Violation

On or about September 1, 2010, Held served Rich Brands and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Rich Brands and such public enforcers with notice that Rich Brands was alleged to be in violation of Proposition 65 for failing to warn consumers that the 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

Rich Brands denies the material factual and legal allegations contained in Held’s Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Rich Brands 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 Rich Brands of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rich Brands. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Rich Brands under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean April 15, 2011.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulate or Cease Sales

Commencing on the Effective Date, Rich Brands shall do one of the following: (a) cease selling, shipping, or distributing the Products to entities in California or to entities which may offer the Products for resale in California; or (b) shall not manufacture, distribute, ship, sell or offer to be shipped for sale in California any Products unless the products contain less than or equal to 1,000 parts per million 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. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code §25249.7(b)

Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be \$4,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code §25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% to Held.

Rich Brands shall issue two separate checks for the penalty payment: (a) one check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Anthony Held” in the

amount of \$1,000, representing 25% of the total penalty.

Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000. The second 1099 shall be issued to Held in the amount of \$1,000, whose address and tax identification number shall be furnished upon request. Payment shall be delivered on or before April 25, 2011, 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

4.1 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 California Code of Civil Procedure §1021.5, for all work performed in this matter. Under these legal principles, Rich Brands shall pay the total of \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Rich Brands' attention, and negotiating a settlement in the public interest. Rich Brands shall make three separate payments payable to "The Chanler Group," as follows:

- a) The first payment of \$6,000 shall be due on or before April 25, 2011.
- b) The second payment of \$10,000 shall be due on or before May 25, 2011.
- c) The third and final payment of \$10,000 shall be due on or before June 25, 2011.

Rich Brands shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and deliver all payments to the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Held's Release of Rich Brands

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"), that were brought or could have been brought against Rich Brands or its subsidiaries or affiliates, and each of Rich Brands' downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of

each of them (collectively “Releasees”) in this matter. This release shall be limited to Claims arising from or related to the presence of the Listed Chemical in the Products. The Parties further understand and agree that this release shall not extend upstream to any third parties that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Rich Brands.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Rich Brands and Rich Brands’ Releasees with the requirements of Proposition 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by Rich Brands.

5.2 Rich Brands’ Release of Held

Rich Brands 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 and/or the Listed Chemical, and thereafter Rich Brands engages in activity which causes Rich Brands no longer to be in compliance with the terms of this Settlement Agreement, then Rich Brands 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.

8. NOTICES

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

For Rich Brands:

Richard Neill, President
Rich Brands, LLC
7227 North 16th Street, Suite 209
Phoenix, AZ 85020

with copy to:

Rebecca Nittle, Esq.
Law Office of Rebecca Nittle
221 E. Marconi Avenue
Phoenix, AZ 85022

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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.

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12. AUTHORIZATION

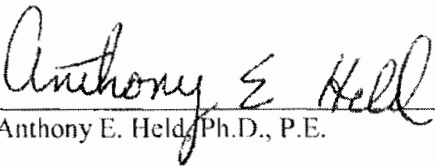
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: APPROVED
By Tony Held at 6:03 pm, Apr 04, 2011

Date: April 15, 2011

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

By: 
Richard Neill, President
Rich Brands, LLC