

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Enesco, LLC**

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Held”), and Enesco, LLC. (“Enesco”), with Held and Enesco 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. Enesco 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”).

### **1.2 General Allegations**

Held alleges that Enesco has manufactured, distributed and/or sold in the State of California, pouches 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.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as pouches containing DEHP including, but not limited to, *Mary Engelbreit Pouch, OhSo Breit, Item #134653 (#796437 13465 3)*. All such items shall be referred to herein as the “Products.”

### **1.4 Notices of Violation**

On October 15, 2010, Held served Enesco and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that alleged that Enesco was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that its Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the October 15, 2010, Notice.

**1.5 No Admission**

Enesco 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. Nothing in this Settlement Agreement shall be construed as an admission by Enesco 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 Enesco of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Enesco. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Enesco under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 21, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION**

Commencing on the Effective Date, Enesco 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 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other 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, Enesco shall pay \$1,000 in civil penalties. This civil penalty reflects a credit of \$4,000 due to Enesco's commitment to reformulate the Products pursuant to Section 2 above. 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% of the penalty remitted to Held. Enesco 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 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 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 March 4, 2011, 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 acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Enesco then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach 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 (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Enesco shall pay the total amount of \$11,500 for fees and costs incurred as a result of investigating, bringing this matter to Enesco's attention, and negotiating a settlement in the public interest. Enesco shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before March 4, 2011, to the following address:

The Chanler Group

Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

**5. RELEASE OF ALL CLAIMS**

**5.1 Held's Release of Enesco**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, 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"), that were brought or could have been brought against Enesco, or its parents, subsidiaries or affiliates, and all of their downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other downstream 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 is limited to, but is intended to be a full, final, and binding resolution of, those Claims that arise under Proposition 65, as against Enesco and the Releasees, as such Claims relate to Enesco's alleged failure to warn about exposures to DEHP contained in the Products. Enesco's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for Enesco and the Releasees with respect to DEHP in Products after the Effective Date.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products for Enesco or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Enesco.

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

Enesco 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.

### **5.3 Post Execution Activities**

The parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Enesco or the Releasees under Proposition 65 as covered under this release. If requested in writing by Enesco (within twelve months of the Effective Date), Enesco 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 requested, Held agrees to reasonably cooperate with Enesco 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. Pursuant to CCP §§ 1021 and 1021.5, Enesco 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 \$18,000. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by Enesco to have Held file a complaint and seek a consent judgment. Enesco will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Enesco within ten days after its receipt of monthly invoices from Held for work performed under this paragraph. In

the event a third party were to appeal the entry of a Consent Judgment sought pursuant to this Section 5.3, Held and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

**6. 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 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 Enesco 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 Enesco 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: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Enesco:

Matt Myren, Esq.  
SVP, General Counsel and Secretary  
Enesco, LLC  
225 Windsor Drive  
Itasca, Illinois 60143

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 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 and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

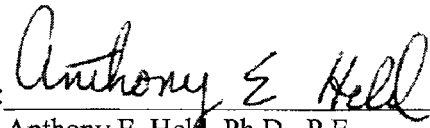
**AGREED TO:**

**APPROVED**

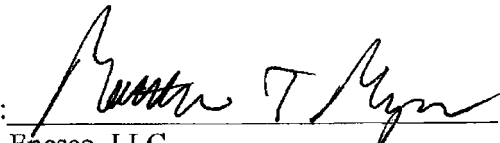
Date: By Tony Held at 9:10 am, Mar 11, 2011

Date: February 18, 2011

By:

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

By:

  
Enesco, LLC