

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Mario Badescu Skin Care, Inc.**

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Dr. Held”), and Mario Badescu Skin Care, Inc. (“Mario Badescu”), with Dr. Held and Mario Badescu collectively referred to as the “parties.” 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. Mario Badescu 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 § 25249.6 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Dr. Held alleges that Mario Badescu has manufactured, distributed, and/or sold in the State of California, toiletry cases/bags 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 birth defects and other reproductive harm. DEHP shall be referred to hereinafter as the “Listed Chemical.”

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as toiletry cases/bags containing excessive levels of DEHP including, but not limited to, the *Mario Badescu Hydration On The Go (#7 85364 14017 2)*. All such items shall be referred to hereinafter as the “Products.”

### **1.4 Notice of Violation**

On March 31, 2011, Dr. Held served Mario Badescu and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Mario Badescu was allegedly in violation of California Health & Safety

Code § 25249.6 for not having provided a clear and reasonable warning to its customers and consumers in California that the Products expose users to the Listed Chemical. No public enforcer has commenced and diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

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

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 30, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulated Products**

Commencing on the Effective Date, Mario Badescu shall only ship, sell, or offer to ship for sale in California Products that are "DEHP-Free." For purposes of this Settlement Agreement, DEHP-Free shall mean Products containing no more than 1000 parts per million (0.1%) of the Listed Chemical when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in 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 of the claims and violations alleged in the Notice and referred to in this Settlement Agreement, Mario Badescu shall pay \$2,000 in civil penalties. This amount reflects a penalty credit of \$6,000 to civil penalties potentially totaling \$8,000. Dr. Held agreed to provide a penalty credit in response to Mario Badescu's cooperation in the settlement of this action and its commitment to reformulate the Products to be DEHP-Free pursuant to Section 2.1, above.

Civil penalties shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the State of California Environmental Protection Agency's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% remitted to Dr. Held. Mario Badescu shall issue two checks for the civil penalty payments to: (a) "The Chanler Group in Trust for OEHHA" in the amount of \$1,500; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$500. Two 1099 forms shall also be provided to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose address and tax identification number shall be furnished upon request, five days before payment is due. The payments shall be delivered to Dr. Held's counsel within five days of 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 acknowledge that Dr. 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. Mario Badescu 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 Dr. 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. Mario Badescu shall pay the total amount of \$23,000 for fees and costs incurred as a result of investigating, bringing this matter to Mario Badescu’s attention, and negotiating a settlement in the public interest. Mario Badescu shall make the check payable to “The Chanler Group” and shall issue a separate 1099 for fees and costs (EIN: 94-3171522). Payments pursuant to this section shall be delivered to Dr. Held’s counsel within five days of the Effective Date at the following address:

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

**5. CLAIMS COVERED AND RELEASED**

**5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final, and binding resolution between Dr. Held, on behalf of himself and the public, and Mario Badescu, of any violation of Proposition 65 that was or could have been asserted by Dr. Held against Mario Badescu, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, shareholders, attorneys, and each person or entity to whom Mario Badescu directly or indirectly distributes or sells the Products, including, without limitation, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to the Listed Chemical contained in the Products sold by Mario Badescu.

**5.2 Dr. Held’s Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, 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 arising under Proposition 65 with respect to the Listed Chemical contained in the Products (collectively "Claims"). The above notwithstanding, the release provided by this Section is limited to those Claims that were brought or could have been brought by Dr. Held against Mario Badescu and Releasees for unwarned exposures to the Listed Chemical contained in the Products sold by Mario Badescu, as such claims are alleged in the Notice.

**5.3 Dr. Held's Individual Release of Claims**

Dr. Held, also in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind arising out of alleged or actual exposures to the Listed Chemical contained in the Products. The release provided by this Section is limited to those Claims that were brought or could have been brought by Dr. Held against Mario Badescu and Releasees based on unwarned exposures to the Listed Chemical contained in the Products sold by Mario Badescu.

**5.4 Mario Badescu's Release of Dr. Held**

Mario Badescu on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Dr. 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 Dr. 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 or with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provision of this

Settlement Agreement is 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 or the Listed Chemical, then Mario Badescu shall endeavor to 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 Mario Badescu 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 Mario Badescu:

Morise Cabasso, President  
Mario Badescu Skin Care, Inc.  
320 East 52<sup>nd</sup> Street  
New York, NY 10022

With a copy to:

Victor E. Didia, Esq.  
22 West 38<sup>th</sup> Street, 12<sup>th</sup> Floor  
New York, NY 10018

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.

**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)**

Dr. 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**

By Tony Held at 10:40 am, Jun 23, 2011

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

Date: JUNE 21, 2011

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

By: Morise Cabasso  
Morise Cabasso, President  
Mario Badescu Skin Care, Inc.