

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Crew Knitwear Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Dr. Held”) and Crew Knitwear Inc. (“Crew Knitwear”), with Dr. Held and Crew Knitwear 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. Crew Knitwear 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

Dr. Held alleges that Crew Knitwear has manufactured, distributed, sold and/or offered for sale in the State of California, belts 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.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as belts containing DEHP manufactured, distributed, sold and/or offered for sale in California by Crew Knitwear, including, but not limited to, *JKLA California Plaid Shirt with Belt, Style: 4718C09M*, hereinafter the “Products.”

1.4 Notice of Violation

On April 19, 2011, Dr. Held served Crew Knitwear and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that alleged that Crew Knitwear 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 DEHP. No public enforcer has diligently prosecuted the allegations set forth in the April 19, 2011, Notice.

1.5 No Admission

Crew Knitwear denies the material, factual and legal allegations contained in Dr. 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 Crew Knitwear 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 Crew Knitwear of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Crew Knitwear under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 15, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

For purposes of this settlement agreement "Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each accessible component 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.

2.2 Commitment

As of the Effective Date the *JKLA California Plaid Shirt with Belt, Style: 4718C09M* products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by Crew Knitwear shall qualify as Reformulated Products as defined in section 2.1 above. All other Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by Crew Knitwear shall qualify as Reformulated Products or shall carry appropriate Proposition 65 warnings as defined in section 2.3 below.

2.3 Product Warnings

Commencing on the Effective Date, Crew Knitwear shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsections 2.3(a)

and (b). Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Crew Knitwear shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Crew Knitwear or any person selling the Products, that states:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Crew Knitwear may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Crew Knitwear's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm:
[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that Crew Knitwear sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Crew Knitwear shall

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Crew Knitwear may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Crew Knitwear must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

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

In settlement of all the claims referred to in this Settlement Agreement, Crew Knitwear shall pay \$2,000 in civil penalties. This penalty amount reflects a credit of \$4,000 based on Crew Knitwear's commitment to reformulate pursuant to Section 2.2 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 ("OEHHHA") and the remaining 25% of the penalty remitted to Dr. Held. Crew Knitwear 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 OEHHHA") in the amount of \$1,500, representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Anthony E. Held" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHHA, 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 two calendar days before payment is due. The payments shall be delivered on or before November 15, 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 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. Crew Knitwear 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. Crew Knitwear shall pay the total amount of \$16,250 for fees and costs incurred as a result of investigating, bringing this matter to Crew Knitwear's attention, and negotiating a settlement in the public interest. Crew Knitwear shall issue a separate 1099 for fees and costs (BIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before November 15, 2011, to 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 Crew Knitwear, of any violation of Proposition 65 that was or could have been asserted by Dr. Held against Crew Knitwear, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Crew Knitwear directly or indirectly distributes or sells the Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their alleged failure to warn about alleged exposures to DEHP contained in the Products that were sold by Crew Knitwear.

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, limited to and arising under Proposition 65 with respect to DEHP in the Products sold by Crew Knitwear (collectively "claims"), against Crew Knitwear and Releasees.

5.3 Dr. Held's Individual Release of Claims

Dr. Held also, in his individual capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, against Crew Knitwear and Releasees, limited to and arising out of alleged or actual exposures to any chemical enumerated on the Proposition 65 list as of the date of execution of this Settlement Agreement, including DEHP, in the Products manufactured, distributed or sold by Crew Knitwear.

5.4 Crew Knitwear's Release of Dr. Held

Crew Knitwear on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys and other representatives, for any and all actions taken or statements 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 with respect to the Products.

6. 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 Crew Knitwear or the Releasees under Proposition 65 as covered under this release. If requested in writing (within twelve

months of the Effective Date), Crew Knitwear may ask Dr. 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, Dr. Held agrees to reasonably cooperate with Crew Knitwear 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, Crew Knitwear will reimburse Dr. 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 \$16,000.00. No fees under this paragraph will be due and owing to Dr. Held or his counsel unless a written request is made by Crew Knitwear to have Dr. Held file a complaint and seek a consent judgment. Crew Knitwear will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Crew Knitwear within ten days after its receipt of monthly invoices from Dr. Held for work performed under this paragraph. Notwithstanding Section 5.2 above, in the event a third party were to appeal the entry of a Consent Judgment sought pursuant to this Section, Section 6.0, Dr. Held and his counsel shall be entitled to seek their fees and costs associated with all such work pursuant to CCP § 1021.5.

7. 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.

8. 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, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Crew Knitwear shall 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 the settling defendants from an obligation to comply with any pertinent state or federal toxics control law.

9. **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 Crew Knitwear:

Bryan King Sheldon
Lim, Ruger & Kim, LLP
1055 West Seventh Street, Suite 2800
Los Angeles, CA 90017

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

AGREED TO:

AGREED TO:

APPROVED

Date: By Anthony Held at 8:16 am, Nov 16, 2011

Date: 11/15/2011

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

By: [Signature]
Chris Jung, President
Crew Knitwear Inc.