

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Anthony E. Held, Ph.D., P.E. and Spex Clothing Company, Inc.**

This Settlement Agreement is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. (“Held” or “Plaintiff”) and Spex Clothing Company, Inc. (“Spex” or “Defendant”), with Plaintiff and Defendant collectively referred to as the “parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Spex 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 Spex has manufactured, imported, distributed, sold, and/or offered for sale in the State of California, belts that contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known 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, imported, distributed, sold, and/or offered for sale in California by Spex, including, but not limited to, *Art and Soul Purple Jazz Shirt with Belt, #5130588A1 (#6 17406 39694 3)*, hereinafter “Products.”

#### **1.4 Notice of Violation**

On April 19, 2011, Held served Spex and various public enforcement agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice that alleged that Spex 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. To the best of the parties’ knowledge, no public enforcer has prosecuted the allegations set forth in

the April 19, 2011, Notice. On July 15, 2011, Held filed a complaint in the Superior Court in and for the County of Marin (the "Court"), *Held v. Spex, et al.*, Case No. CIV-1103516 (the "Action"), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain belts sold by Spex. However, due to defects in effectuating service, and Spex's desire to resolve this matter out-of-court in order to minimize litigation costs, the Complaint was dismissed, without prejudice, by Held on or about November 4, 2011.

### **1.5 No Admission**

Spex denies the material, factual, and legal allegations contained in Held's Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered for sale 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 Spex 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 Spex of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Spex's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 5, 2012.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) 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 the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date all Products manufactured, imported, distributed, sold or offered for sale in the State of California by Spex shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

## **3. PAYMENT OF PENALTIES**

In settlement of all the claims referred to in this Settlement Agreement, Spex shall pay a civil penalty of \$2,000. This penalty amount reflects a credit of \$5,000 based on Spex's commitment to reformulate pursuant to Section 2.1 above. The civil penalty shall 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 Anthony E. Held, Ph.D., P.E.. Spex 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 \$1,500 representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$500 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony E. Held, Ph.D., P.E., whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Held's counsel on or before September 20, 2012, at the following address:

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

## **4. REIMBURSEMENT OF ATTORNEY'S 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. Spex 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. Spex shall reimburse Held and his counsel \$13,000 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement in the public interest. Spex shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make checks payable to "The Chanler Group" and shall deliver payments on or before September 20, 2012, to the following address:

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

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Held's Release of Spex**

This Settlement Agreement is a full, final and binding resolution between Plaintiff personally and Spex, of any violation of Proposition 65 that was or could have been asserted by Plaintiff on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Defendant, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant directly or indirectly distributes or sells Products, including but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), with respect to the Products and Spex's alleged failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Defendant before the Effective Date.

In further consideration of the promises and agreements herein contained, Plaintiff on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,

when acting on his own behalf, hereby waives all Plaintiff's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Plaintiff may have, 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, but exclusive of fees and costs on appeal, limited to and arising under Proposition 65 with respect to the Products (collectively "claims"), including but not limited to any claims related to their alleged failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Defendant before the Effective Date, against Defendant and Releasees.

## **5.2 Spex's Release of Plaintiff**

Defendant on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff 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. 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 Spex or the Releasees under Proposition 65 as covered under this release. If requested in writing by Spex (within twelve months of the Effective Date), Spex 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 by Spex, Held agrees to reasonably cooperate with Spex 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, Spex 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 Spex to have Held file a complaint and seek a consent judgment. If Spex requests Held to perform any tasks associated with Section 6 of this Settlement Agreement, Spex will remit payment to The Chanler Group, at the address set forth in Section 4 above and such additional fees shall be paid by Spex within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

**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 Spex 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 Spex 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 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:

To Spex:

Patrick Papalia, Esq.  
Archer & Greiner, P.C.  
Court Plaza South -West Wing  
21 Main Street, Suite 353  
Hackensack, NJ 07601

To 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. A facsimile or pdf signature shall be as valid as the original.

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

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**12. MODIFICATION**

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

**13. AUTHORIZATION**

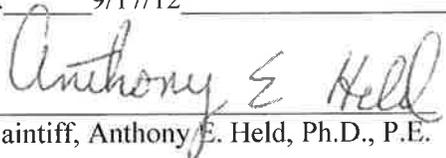
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 9/17/12

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

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

By: \_\_\_\_\_  
Defendant, Spex Clothing Company, Inc.

To Spex:

Patrick Papalia, Esq.  
Archer & Greiner, P.C.  
Court Plaza South -West Wing  
21 Main Street, Suite 353  
Hackensack, NJ 07601

To Held:

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

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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:

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

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

AGREED TO:

Date: 9/14/2012

By:  \_\_\_\_\_  
Defendant, Spex Clothing Company, Inc.