

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Francesca’s Collections Inc. (“FCI”), with Held and FCI 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. FCI 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 FCI manufactures, distributes, and/or sells in California toiletry cases/bags containing di(2-ethylhexyl) phthalate (“DEHP”) without warning in violation of Proposition 65. 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, and to which this Agreement is specifically limited, are toiletry cases/bags identified and known as *Vinnie’s Tampon Case, QQ989, #17840* containing the Listed Chemical (“Products”) that are manufactured, distributed, and/or sold in California by FCI.

1.4 Notice of Violation

On or about May 11, 2011, Held served FCI and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that FCI was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

FCI denies the material, factual, and legal allegations contained in Held's Notice and maintains that all of the products it 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 FCI 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 FCI of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by FCI. This section shall not, however, diminish or otherwise affect FCI'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 November 1, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

Beginning on the Effective Date and continuing thereafter, FCI shall only ship, sell, or offer to ship for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products are Products containing no more than 1,000 parts per million ("ppm") (0.1%) of the Listed Chemical in any accessible component (i.e., any component that may be mouthed, touched, or handled during a reasonably foreseeable use) when analyzed according to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or a similar methodology utilized by state or federal agencies to determine DEHP content in a solid substance.

The issue of the level of DEHP exposure was not definitively resolved in this case, as it was agreed between the Parties that the expert testimony required to examine the amount of chemical available for transfer from a product, how the product is handled in its regular use, how the transfer of the chemical occurs, and how much of the chemical is ingested or absorbed, is

sufficiently complex that its outcome presented risk to both Parties which was better left unresolved. Instead of litigating this issue, the Parties agreed that the DEHP content will be reduced to 1,000 ppm or less by weight to ensure that the level of exposure to the Listed Chemical has “no observable effect.”

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

Pursuant to Health & Safety Code § 25249.7(b) and in settlement of all of the violations alleged in the Notice and referred to in this Settlement Agreement, FCI shall pay \$2,500 in Civil Penalties. Civil penalties shall be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d) with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) remitted to Held.

FCI shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$1,825; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$675. Two 1099 forms shall also be provided for the payments 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 three calendar days before payment is due. Payment shall be delivered to Held’s counsel on or before 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 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 (“CCP”) § 1021.5 for all work performed in this matter. Under these legal principles, FCI shall pay the \$20,000 for fees and costs incurred by Held and Held’s counsel investigating, bringing this matter to the FCI’s attention, and negotiating a settlement in the

public interest. FCI shall provide payment in the form of a check payable to “The Chanler Group.” FCI shall also issue a third 1099 form for fees and costs paid to the The Chanler Group (EIN: 94-3171522), and deliver payment to Held’s counsel on or before the Effective Date at 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 Full, Final and Binding Resolution of Proposition 65 Allegations

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

5.2 Held’s Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, 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, exclusive of fees and costs on appeal, if any, arising under Proposition 65 (collectively “Claims”) that were brought or could

have been brought against FCI for alleged or actual unwarned exposures to the Listed Chemical contained in the Products sold by FCI.

5.3 Held's Individual Release of Claims

Held, in his individual capacity only and *not* in his representative capacity, also 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, whether known or unknown, suspected or unsuspected, arising out of unwarned exposures to the Listed Chemical contained in the Products sold by FCI.

Held further acknowledges that he is familiar with California Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Held, in his individual capacity only and not in his representative capacity, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. The release matters, in the instant case, being limited to unwarned exposures to the listed chemical contained in the Products sold by FCI.

5.4 FCI's Release of Held

FCI on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against 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 Held and his attorneys and other representatives, whether in the

course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

FCI also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions and causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Held arising out of the Notice or related enforcement activity. FCI acknowledges that it is familiar with Civil Code § 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

FCI expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of its provisions are held by a court to be unenforceable, the validity of the 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, then FCI 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 to the following addresses:

For Held:

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

For FCI:

Legal Department
Attention: General Counsel
Francesca's Collections, Inc.
3480 West 12th Street
Houston, TX 77008

with a copy to:

Laura P. Worsinger, Esq.
Dykema Gossett, LLP
333 S. Grand Avenue, Suite 2100
Los Angeles, CA 90071

Any party may, from time to time, 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 or portable document format (PDF) signature, 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 the written agreement of the Parties.

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:

Date: **APPROVED**
By Tony at 11:14 am, Oct 26, 2011

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

AGREED TO:

Date: October 25, 2011

By: Kal Malik
Kal Malik, EVP and General Counsel
Francesca's Collections, Inc.