

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Dorfman-Pacific Co.**

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”), and Dorfman-Pacific, Inc. (“Dorfman”), with Held and Dorfman collectively referred to as the “Parties” and each, individually, as the “Party.” 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. Dorfman 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 Dorfman has manufactured, distributed, sold and/or offered for sale in the State of California, tote 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.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as tote bags containing DEHP manufactured, distributed, sold and/or offered for sale in the State of California by Dorfman including, but not limited to, *Cappelli Strawworld Tote Bag, BAG619-ASST (#0 16698 75537 5)*, collectively referred to hereinafter as “Products.”

### **1.4 Notices of Violation**

On September 19, 2011, Held served Dorfman and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with notice that alleged that Dorfman was in violation of Proposition 65 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 September 19, 2011, Notice.

### **1.5 No Admission**

Dorfman 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 Dorfman 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 Dorfman of any fact, finding, conclusion, and issue of law or violation of law, such being specifically denied by Dorfman. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Dorfman under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 16, 2012.

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

### **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), referred to herein as the "DEHP Standard", 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. For the purposes of this Settlement Agreement, the term "Accessible Component" shall mean any component of the Products that could be touched by a person during reasonably foreseeable use.

## **2.2 Reformulation Commitment**

As of the January 1, 2013, all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Dorfman shall be Products that qualify as Reformulated Products as defined in section 2.1 above.

## **2.3 Product Warnings**

Commencing March 16, 2012 through and until December 31, 2012 Dorfman shall, for all Products other than Reformulated Products, provide clear and reasonable warnings as set forth below. 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. The warning shall state:

**CALIFORNIA PROPOSITION 65 WARNING.** This product contains phthalate chemicals, including DEHP, known to the State of California to cause 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, Dorfman shall pay \$1,500 in civil penalties. This civil penalty reflects a credit of \$3,000 due to Dorfman's commitment to reformulate the Products 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 ("OEHHA") and the remaining 25% of the penalty remitted to Held. Dorfman 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 \$1,125 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 \$375, 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 16, 2012, 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. Dorfman 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. Dorfman shall pay the total amount of \$15,500 for fees and costs incurred as a result of investigating, bringing this matter to Dorfman’s attention, and negotiating a settlement in the public interest. Dorfman 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 16, 2012, to the following address:

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

## **5. RELEASES**

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

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

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, hereby waives all Held's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Held 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 DEHP in the Products manufactured, distributed, sold and/or offered for sale by Dorfman before the Effective Date (collectively "claims"), against Dorfman and Releasees.

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

Dorfman 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement Dorfman may ask Held, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Held agrees to reasonably cooperate with Dorfman and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Dorfman will reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000, exclusive of fees and cost that may be incurred on appeal. Dorfman will remit payment to The Chanler Group, at the address set forth in Section 9 below. Such additional fees shall be paid by Dorfman 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dorfman 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 Dorfman from any 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 Dorfman:

Melissa Jones, Esq.  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

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.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

This Consent Judgment 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 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.

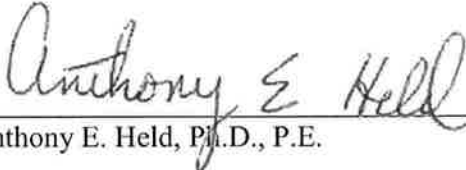
**AGREED TO:**

**AGREED TO:**

**APPROVED**

Date: *By Anthony Held at 2:32 pm, Mar 07, 2012*

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

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

By: \_\_\_\_\_  
Douglas Highsmith  
Dorfman-Pacific, Inc.



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:**

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

Date: 3/10/12

By: \_\_\_\_\_

By: 

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

Douglas Highsmith  
Dorfman-Pacific, Inc.