

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and First Aid Only

This Settlement Agreement is entered into by and between Anthony Held (“Held”) and First Aid Only, Inc. (“FAO”), with Held and FAO 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. Held alleges that FAO 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 FAO has manufactured, imported, distributed, sold, and/or offered for sale in the State of California, first aid kits with vinyl/PVC cases containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is 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 first aid kits with vinyl/PVC cases, including but not limited to, the *First Aid Essentials 131 pieces, Model FAO-428 (#0 92265 32428 1)*, *Auto First Aid Essentials 143 pieces, Model FAO-552 (#0 92265 07552 7)*; *First Aid for Life Mini First Aid Kit, BCA-100 (#0 92265 22100 9)*; and *First Aid Essentials 81 pieces, FAO-422 (#0 92265 32422 9)*, manufactured, imported, distributed, shipped, sold, and/or offered for sale or shipment by FAO in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On September 21, 2012, Held served FAO and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. The Notice only applied to the First Aid Essentials 131 pieces, Model FAO-428 (#0 92265 32428 1), not to the other products, whose inclusion in this Settlement Agreement is pursuant to the wishes of FAO. 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

FAO 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 FAO 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 FAO of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect FAO’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 March 1, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, FAO agrees that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in

California, will be “Reformulated Products.” For purposes of this Settlement, Reformulated Products comply with the following content limits: DEHP in concentration less than 1,000 parts per million (“ppm”) DEHP by weight in any Accessible Component (i.e. any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA 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.

2.2 Sales of Existing Products with Warnings

Nothing in this Settlement Agreement shall preclude FAO from shipping and selling in California its existing inventory of Products. Commencing on February 8, 2013, FAO agrees that any Products that FAO manufactured prior to February 1, 2013, and which FAO directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Section 2.1 will include a warning affixed to the packaging, labeling, or directly on each Product that states:

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

3. PAYMENT OF PENALTIES

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, FAO shall, by the Effective Date, pay an initial civil penalty in the amount of \$3,000.00. 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 Held. FAO shall issue two separate checks for the penalty payment: (a) one check made payable to OEHHA in the amount of \$2,250.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust

for Anthony Held” in the amount of \$750.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Pursuant to Health & Safety Code § 25249.7(b), on September 1, 2013, FAO shall pay a final civil penalty in the amount of \$17,000.00. The final civil penalty shall be waived in its entirety, if, on or before August 15, 2013, an officer of FAO certifies to Held’s counsel, in writing, that all Products sold or offered for sale by FAO in California after August 15, 2013, are Reformulated Products, and that FAO will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with seventy-five percent of the penalty payment earmarked for OEHHA, and the remaining twenty-five percent of the penalty earmarked for Held. FAO shall issue two separate checks for the final penalty payment: (a) one check made payable to “OEHHA” in the amount of \$12,750.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Anthony Held” in the amount of \$4,250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

3.3 Payment Procedures

3.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Held, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each payment, FAO shall issue separate 1099 forms for each payment, as follows:

- (a) For each penalty payment owed in Sections 3.1 through 3.2, a 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of 75% of the total penalty payment;
- (b) For each penalty payment owed in Sections 3.1 through 3.2, a 1099 shall be issued to Held, whose address and tax

identification number shall be furnished upon request, in the amount of 25% of the total penalty payment.

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 issue to be resolved after the material terms of the agreement had been settled. FAO 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. FAO shall reimburse Held and his counsel \$34,000.00 for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. FAO 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 February 8, 2013, to the following address:

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

5. RELEASES

5.1 Held's Release of FAO

This Settlement Agreement is a full, final and binding resolution between Held, and FAO, 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 FAO, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom FAO directly or indirectly distributes or sells Products, including, but not limited,

to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by FAO in California prior to 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, shipped, sold and/or offered for sale or shipment by FAO prior to the Effective Date (collectively "claims"), against FAO and Releasees.

5.2 FAO's Release of Held

FAO 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, FAO may ask Held, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a consent judgment, and seek the court's approval of the consent

judgment pursuant to Health and Safety Code § 25249.7, or as may otherwise be allowed by law. If so requested, Held agrees to reasonably cooperate with FAO, and the Parties and their respective counsel agree to mutually employ their best efforts 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, FAO 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 \$15,000, exclusive of fees and costs that may be incurred on appeal. FAO will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by FAO 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 FAO 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 FAO from an obligation to comply with any pertinent state or federal toxic control laws.

9. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

10. 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 FAO:

Bruce Nye, Esq.
Adams, Nye & Becht, LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

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.

11. 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.

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

Held and his attorneys agree to comply with the reporting requirements

referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. 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: February 12, 2013 _____

Date: _____

By: Anthony E Held
Anthony Held

By: _____
Mark Miller, President
First Aid Only, Inc.

referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. 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: 2.14.13

By: _____

Anthony Held

By: _____

Mark Miller, President
First Aid Only, Inc.