

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held and Fender Musical Instruments Corporation

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter “Held”) and Fender Musical Instruments Corporation, (hereinafter “Fender”), with Held and Fender 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. Fender 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, Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Fender has manufactured, distributed, sold and offered for sale in the State of California certain drum thrones with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP and other phthalates including butyl benzyl phthalate (“BBP”) and di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals known to cause birth defects and other reproductive harm. DEHP, BBP, and DBP are collectively referred to herein as “Listed Chemicals.”

1.3 Product Description

The products that are addressed by this Settlement Agreement are drum thrones with vinyl/PVC upholstery containing DEHP that are manufactured, distributed, sold and offered for sale in the State of California by Fender including, but not limited to, the *Gibraltar Drum Throne, No. 9608HM (#7 36021 90229 9)* (referred to hereinafter as the “Products”).

1.4 Notice of Violation

On or about July 24, 2013, Held served Fender and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Fender and

certain requisite public enforcement agencies with notice that alleged that Fender was in violation of Proposition 65 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 diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 15, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

For purposes of this Settlement Agreement, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of each of the Listed Chemicals, when analyzed pursuant EPA testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies in determining compliance with phthalate standards.

2.2 Reformulation Commitment

Following its receipt of Held's July 24, 2013 Notice, Fender: (a) immediately conducted an investigation concerning the potential presence of Listed Chemicals in the Products; and (b) implemented a reformulation process to terminate the use of Listed Chemicals in the manufacture of all the Products.

In lieu of Proposition 65 warnings, Fender agrees that, beginning immediately all Products manufactured for sale in California shall be Phthalate Free. Fender represents and warrants that, in response to Plaintiff's Notice, it has already begun to implement this reformulation commitment and will require its Product manufacturers to meet the reformulation standard such that all Products are Phthalate Free as expeditiously as reasonably possible, but in no event later than October 31, 2013.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Fender shall pay a total of \$9,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Held.

3.1.1 Initial Civil Penalty

Fender shall pay an initial civil penalty in the amount of \$4,500 within fifteen (15) days of the Effective Date. Fender shall issue two separate checks to: (a) "OEHHA" in the amount of \$3,375; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$1,125. All penalty payments shall be delivered to the addresses listed in Sections 3.2 and 3.3 below.

3.1.2 Final Civil Penalty

Fender shall pay a final civil penalty of \$4,500 on or before December 31, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2013, an officer of Fender provides Held's counsel with written certification that as of the date of such certification and continuing into the future, Fender has met the reformulation standard specified in Section 2 above, such that all Products manufactured for sale in California by Fender are Phthalate Free. Held must receive any such certification on or before December 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. If it is unable to provide timely certification, Fender shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,375; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$1,125.

3.2 The portion of the penalty payment owed to Held, pursuant to Sections 3.1.1 and 3.1.2, 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

3.3 The portion of the penalty payment owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 and 3.1.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses:

For United States Postal Service Delivery:

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

A copy of the checks payable to OEHHA shall be mailed to The Chanler Group at the address set forth above in Section 3.2, as proof of payment to OEHHA.

3.4 Issuance of 1099 Forms. After each penalty payment, Fender shall issue separate 1099 forms for each payment owed to OEHHA and Held (whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties).

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. Held 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 the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Fender shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Fender's attention, and negotiating a settlement in the public interest. Fender shall pay Held and his counsel \$29,500 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "The Chanler Group" and shall be delivered on or before fifteen days following the Effective Date, at the following address:

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

In conjunction with the above, Fender shall issue a separate 1099 for fees and cost paid in the amount of \$29,500 to The Chanler Group, Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, California 94710 (EIN: 94-3171522).

5. RELEASE OF ALL CLAIMS

5.1 Release of Fender and Downstream Customers

This Settlement Agreement is a full, final and binding resolution between Held and Fender 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 Fender, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Fender directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (hereinafter "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured by or for Fender before the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, 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, but exclusive of fees and costs on appeal) of any nature whatsoever, whether known or unknown, fixed or contingent against Fender and Releasees for unwarned exposures to the Listed Chemicals in Products manufactured by or for Fender prior to the Effective Date.

5.2 Fender's Release of Held

Fender, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Held, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Fender may ask Held, in writing, to draft and file a complaint in the public interest, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Held agrees to reasonably cooperate with Fender and the Parties agree to use their best efforts, and that of their counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, Fender will reimburse Held and his counsel for their reasonable fees and costs incurred in drafting and 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. Fender will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Fender within fifteen 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 held 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 Fender 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.

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 or two-day courier on any party by the other party at the following addresses:

For Fender:

Fender Musical Instruments Corporation
Attn. Chief Legal Officer
17600 N. Perimeter Drive, Suite 100
Scottsdale, AZ 85255

with a copy to:

Robert L. Falk, Esq.
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, California 94105

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; 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)

Held agrees to comply with the reporting form 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 of this Settlement Agreement.

AGREED TO:

Date: October 8, 2013

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

AGREED TO:

Date: October 8, 2013

By: Ellen R. Honig, Associate General Counsel
Fender Musical Instruments
Corporation