

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 Lil’ Drug Store Products, Inc. (“Lil’ Drug”), with Held and Lil’ Drug 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. Lil’ Drug 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 Lil’ Drug manufactures, distributes, sells, and/or offers for sale tools with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”) in California without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to 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 tools with vinyl/PVC grips containing DEHP including, but not limited to, the *Lil’ Auto Store 6” Slip Joint Pliers, LA-041, UPC #0 80893 01041 6*, which were manufactured, distributed, sold and/or offered for sale in California by Lil’ Drug, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about August 16, 2013, Held served Lil’ Drug and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Lil’ Drug was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products exposed users to DEHP. 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

Lil' Drug denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or 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 Lil' Drug 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 Lil' Drug of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Lil' Drug. This Section shall not, however, diminish or otherwise affect Lil' Drug'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 February 3, 2013.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Lil' Drug shall only manufacture, distribute, sell and/or offer for sale in California Products that are Reformulated Products or Products that comply with the warning commitment found in Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 ppm (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. For purposes of this Settlement Agreement, "Accessible Component" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

2.2 Warnings Commitment

The Parties acknowledge and agree that Lil' Drug has already implemented a warning program for all non-Reformulated Products manufactured, imported, distributed, sold and/or offered for sale by Lil' Drug in California, which provides as follows:

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

Lil' Drug shall continue to use said warnings on all non-Reformulated Products sold in California through and until March 31, 2014. However, commencing on April 1, 2014, Lil' Drug shall, for all non-Reformulated Products manufactured, distributed, sold and/or offered for sale in the State of California, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). 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.

(a) Retail Store Sales.

(i) Product Labeling. Lil' Drug shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Lil' Drug or any person selling the Products, that states:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Alternatively, Lil' Drug may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Lil' Drug customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that Lil' Drug sells Products via mail order catalog and/or the internet to customers located in California, after the Effective Date, that are not Reformulated Products, Lil' Drug shall provide warnings for such Products. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Lil' Drug may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Lil' Drug must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▼ contain 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, Lil' Drug shall pay a total of \$6,750 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, as follows:

3.1 Initial Civil Penalty

Lil’ Drug shall pay an initial civil penalty in the amount of \$1,750 on or before the Effective Date. Lil’ Drug shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,312.50; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$437.50. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Lil’ Drug shall pay a final civil penalty of \$5,000 on or before April 15, 2014, The final civil penalty shall be waived in its entirety, however, if, no later than April 1, 2014, an officer of Lil’ Drug provides Held with written certification that, as of the date of such certification and continuing into the future, Lil’ Drug has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Lil’ Drug are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Lil’ Drug shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$3,750; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$1,250.

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 and 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 and 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at

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

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 penalty payment, Lil' Drug shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

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 general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Lil' Drug shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Lil' Drug's attention, and negotiating a settlement in the public interest. Lil' Drug 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 the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Held’s Release of Lil’ Drug

This Settlement Agreement is a full, final and binding resolution between Held and Lil’ Drug, 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 Lil’ Drug, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Lil’ Drug 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 Lil’ Drug 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 his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he 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 Lil’ Drug before the Effective Date, against Lil’ Drug and Releasees.

5.2 Lil’ Drug’s Release of Held

Lil’ Drug, 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, Lil' Drug may ask Held, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with Lil' Drug 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, Lil' Drug will reimburse Held and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. Lil' Drug shall remit payment to The Chanler Group at the payment address provided in Section 3.3.1 above. Such additional fees shall be paid by Lil' Drug 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 provision is 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.

9. 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 on any party by the other party at the following addresses:

To Lil' Drug:

Chris DeWolf, President
Lil' Drug Store Products, Inc.
1201 Continental Place NE
Cedar Rapids, IA 52402

To Held:

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

With copy to:

Michael C. Ford
Polsinelli LLP
One East Washington, Suite 1200
Phoenix, AZ 85004

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.

10. 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.

11. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (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 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:

APPROVED

By Tony Held at 10:19 am, Jan 28, 2014

Date: _____

Date: _____

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

By: _____
Chris DeWolf, President
Lil' Drug Store Products, Inc.

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.

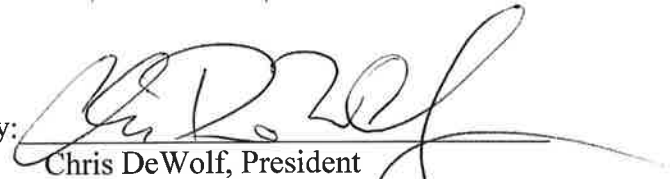
AGREED TO:

AGREED TO:

Date: _____

Date: 1/29/14

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

By: 
Chris DeWolf, President
Lil' Drug Store Products, Inc.