

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 Four Seasons General Merchandise, Inc. ("Four Seasons"), with Held and Four Seasons collectively referred to as the "Parties." Held is an individual residing in the State of California who asserts that he seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Held 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 Four Seasons has manufactured, distributed, sold and/or offered for sale in California bowls with exterior designs containing lead without the requisite Proposition 65 health hazard warnings. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as bowls with exterior designs containing lead including, but not limited to, the *Porcelain Love Bowl, Item No.: 96356, UPC # 95229 96356 3*, which were manufactured, distributed, sold and/or offered for sale in California by Four Seasons, hereinafter referred to the "Noticed Products."

In addition to the Noticed Products identified above, this Settlement Agreement also covers the following products with exterior designs containing lead (hereinafter referred to as the "Additional Products") which were manufactured, distributed, sold and/or offered for sale in California by Four Seasons: (1) *Porcelain Love Soup Mug 16*

ounces, Item No.:96354; and (2) Porcelain Love Soup Mug 10 ounces, Item No.: 96357. The Noticed Products and the Additional Products are hereinafter referred to collectively as the "Products."

As of the date this agreement is executed, Held, through his counsel and to the best of their knowledge, are unaware of any Four Seasons products, other than products covered by this Settlement Agreement, that are manufactured, imported, distributed, sold and/or offered for sale in California that violate Proposition 65.

1.4 Notice of Violation

On or about September 26, 2013, Held served Four Seasons and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice"), alleging that Four Seasons was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Noticed Products exposed users to lead. 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

Four Seasons denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Four Seasons of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Four Seasons of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Four Seasons. This Section shall not, however, diminish or otherwise affect Four Seasons' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 31, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Four Seasons shall only manufacture, distribute, ship, sell, or offer to ship for sale in California Reformulated Products. For purposes of this Consent Judgment, Reformulated Products are Products that comply with the Reformulation Standards set forth in Section 2.2.

2.2 Reformulation Standards

Reformulated Products shall meet or exceed the standards outlined in Sections 2.2.1, 2.2.2 and 2.2.3, subject to the following qualifications:

If the Product contains exterior designs in the Lip and Rim Area (as used throughout this Settlement Agreement, the Lip and Rim Area shall include the exterior upper 20 millimeters of a Product) or on any interior surface, it must also satisfy Section 2.2.4 to be considered a Reformulated Product.

2.2.1 **Wipe Test-Based Standard**

Reformulated Products shall yield a maximum result of 1.0 microgram (“ug”) residual lead content by weight on any surface, exclusive of the Lip and Rim Area or interior surface, with exterior designs sampled pursuant to the NIOSH 9100 sampling protocol and analyzed pursuant to EPA Analytical Methods 3050B and/or 6020A(ICP/MS).

2.2.2 **Content-Based Standard**

Exterior designs, exclusive of the Lip and Rim Area, must only utilize materials that contain a maximum of 90 parts per million (“ppm”) lead by weight as measured either before or after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.¹

¹ If the exterior design is tested after it is affixed to a Product, the percentage of lead by weight must relate only to the decorating material and must not include any

2.2.3 Total Acetic-Acid Immersion Test-Based Standard

A Reformulated Product achieves a result of 0.99 ppm (.0099%) or less lead after correcting for internal volume, when tested pursuant to American Society of Testing and Materials ("ASTM") Standard Test C927-99 test method, modified for total immersion with results corrected for internal volume.

2.2.4 Lip and Rim Area and Interior Surface Exterior Decoration

If a Product contains exterior designs in the Lip and Rim Area, any such exterior design must only utilize decorating materials that yield a result of no detectable lead when tested according to ASTM Test Method C927-80 (2009).

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

In settlement of all claims referred to in this Settlement Agreement, Four Seasons shall pay a total of \$20,000 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, as follows:

3.1 Initial Civil Penalty

Four Seasons shall pay an initial civil penalty of \$7,000 on or before the Effective Date. Four Seasons shall issue two separate checks to: (a) "OEHHA" in the amount of \$5,250, and (b) "The Chanler Group in Trust for Anthony E. Held" in the amount of \$1,750. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Final Civil Penalty

Four Seasons shall pay a final civil penalty of \$13,000 on or before March 30, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than March 15, 2014, an officer of Four Seasons provides Held with written certification that, _____
quantity attributable to any non-decorating material (e.g. the ceramicware substrate).

as of the date of such certification and continuing into the future, Four Seasons 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 Four Seasons 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. Four Seasons shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$9,750; and (b) "The Chanler Group in Trust for Anthony E. Held" in the amount of \$3,250.

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, Four Seasons 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 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. Four Seasons 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. Four Seasons shall pay \$28,000 for all fees and costs incurred as a result of investigating, bringing this matter to Four Season's attention, and negotiating a settlement in the public interest. Four Seasons 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 Four Seasons

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

5.2 Four Seasons' Release of Held

Four Seasons 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 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, Four Seasons 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 Four Seasons 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, Four Seasons 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 \$13,000, exclusive of fees and cost that may be incurred on appeal, if any. Four Seasons will remit payment to The Chanler Group at the payment address provided in Section 3.3.1 above. Such additional fees shall be paid by Four Seasons 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.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be: (i) personally delivered; (ii) sent by first-class, registered or certified mail, return receipt requested; or (iii) sent by overnight courier on any party by the other party at the following addresses:

To Four Seasons:

Rob Nyman, CFO
Four Seasons General Merchandise, Inc.
2801 East Vernon Avenue
Los Angeles, CA 90058

To Held:

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

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 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. MODIFICATION

This Settlement Agreement may be modified only by 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:

AGREED TO:

APPROVED
By Tony Held at 9:09 am, Jan 23, 2014

Date: _____

Date: _____

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

By: _____
John Pourmoradi, President
Four Seasons General Merchandise, Inc.

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.

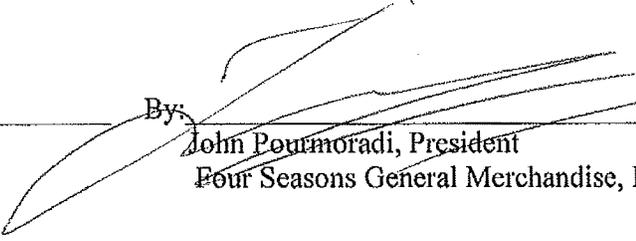
AGREED TO:

AGREED TO:

Date: _____

Date: 2/3/14

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

By: 
John Pourmoradi, President
Four Seasons General Merchandise, Inc.