

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 Alliance Mercantile, Inc., a Washington State corporation, (“Alliance Mercantile”), with Held and Alliance Mercantile 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. Alliance Mercantile 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 Alliance Mercantile manufactures, distributes, sells, and/or offers for sale vinyl/PVC gloves 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, and referred to hereinafter as the “Products,” are defined as vinyl/PVC gloves containing DEHP, specifically limited to the *Raley’s Fine Living Supreme Clean Ultimate PVC Coated Glove, UPC #0 46567 91691 0*, which were sold in California by Raley’s and supplied to Raley’s by Alliance Mercantile.

1.4 Notice of Violation

On or about October 4, 2013, Held served Alliance Mercantile and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”), alleging that Alliance Mercantile 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

Alliance Mercantile 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 Alliance Mercantile 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 Alliance Mercantile of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Alliance Mercantile. This Section shall not, however, diminish or otherwise affect Alliance Mercantile'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, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards and Commitment

Commencing on the Effective Date and continuing thereafter, Alliance Mercantile shall only manufacture or cause to be manufactured, distribute or cause to be distributed, and/or ship or cause to be shipped for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain no more than 1,000 parts per million (0.1%) DEHP in each Accessible Component 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. For purposes of this agreement, "Accessible Components" shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

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

In settlement of all the claims referred to in this Settlement Agreement, Alliance Mercantile shall pay a total of \$8,000 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

Alliance Mercantile shall pay an initial civil penalty in the amount of \$2,000 on or before the Effective Date. Alliance Mercantile shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Alliance Mercantile shall pay a final civil penalty of \$6,000 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 Alliance Mercantile provides Held with written certification that, as of the date of such certification and continuing into the future, Alliance Mercantile has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and/or offered for sale in California by Alliance Mercantile 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. Alliance Mercantile shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$4,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$1,500.

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, Alliance Mercantile 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. Alliance Mercantile shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Alliance Mercantile's attention, and negotiating a settlement in the public interest. Alliance Mercantile 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 Alliance Mercantile

This Settlement Agreement is a full, final and binding resolution between Held and Alliance Mercantile, 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 Alliance Mercantile, its parents, specifically Alliance Mercantile Inc., a Canadian corporation, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Alliance Mercantile directly or indirectly distributes or sells Products, including, but not limited, to Raley's, 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 Alliance Mercantile 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 Alliance Mercantile before the Effective Date, against Alliance Mercantile and Releasees.

5.2 Alliance Mercantile's Release of Held

Alliance Mercantile, 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 Alliance Mercantile 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 Alliance Mercantile 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, Alliance Mercantile 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 \$16,000, exclusive of fees and cost that may be incurred on appeal. Alliance Mercantile will remit payment to The Chanler Group, at the address set forth in Section 3.3.1 above. Such additional fees shall be paid by Alliance Mercantile 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 Alliance Mercantile:

Doug Bell, President
Alliance Mercantile, Inc.
3451 Wayburne Drive
Burnaby BC V5G3L1

To Held:

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

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 12:30 pm, Feb 10, 2014

Date: _____

Date: _____

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

By: _____
Doug Bell, President
Alliance Mercantile, Inc.

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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:

Date: _____

Date: FEBRUARY 7 2014

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

By: 
Doug Bell, President
Alliance Mercantile, Inc.