

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, PhD., P.E. (“Held”) and Impact Products, LLC (“Impact”), with Held and Impact individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Impact 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Impact manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC totes/caddies that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC totes/caddies containing DEHP that are manufactured, sold, or distributed for sale in California by Impact, including, but not limited to, the *Vinyl Gator Caddie, No. 7705*. The vinyl/PVC totes/caddies containing the DEHP shall, where appropriate, be referred to as the “Products.”

1.4 Notice of Violation

On or about October 18, 2013, Held served Impact and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Impact violated Proposition 65 by failing to warn its customers and consumers in California that the

Products expose 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

Impact denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed 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 Impact 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 Impact of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Impact. This Section shall not, however, diminish or otherwise affect Impact'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 January 31, 2014.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulate Products

Commencing on the Effective Date, and continuing thereafter, Impact commits that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products."

2.2 Reformulated Products

Commencing on the Effective Date and continuing thereafter, Impact shall only manufacture for sale or purchase for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. Impact may utilize

any other testing methodology allowed by state or federal agencies for the purpose of determining DEHP content in a solid substance to determine compliance with this Section.

2.3 Sales of Existing Products with Warnings

Nothing in this Settlement Agreement shall preclude Impact from shipping and selling in California its existing inventory of Products. Commencing on January 31, 2014, Impact agrees that any Products that Impact manufactured prior to January 31, 2014, and which Impact directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Sections 2.1 and 2.2 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. 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, Impact shall pay a total of \$12,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code section 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:

3.1.1 Initial Civil Penalty

Impact shall pay an initial civil penalty in the amount of \$2,000.00 on or before January 31, 2014. Impact shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500.00; and (b) “The Chanler Group in Trust for “Anthony E. Held” in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

Impact shall pay a final civil penalty of \$10,000.00 on or before June 30, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than June 15, 2014, an officer of

Impact provides Held with written certification that, as of the date of such certification and continuing into the future, Impact has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Impact are Reformulated Products. Held must receive any such certification on or before June 15, 2014. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Impact shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$7,500.00; and (b) "The Chanler Group in Trust for "Anthony E Held" in the amount of \$2,500.00.

3.2 Attorney 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. Impact 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 section 1021.5, for all work performed through the mutual execution of this agreement. Impact shall pay \$27,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Impact's attention, and negotiating a settlement in the public interest. Impact 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 January 31, 2014, to the address listed in Section 3.3.1(a) 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 3.1.1 through 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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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 Section 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Impact shall issue separate 1099 forms for each payment to Held, whose address and tax identification number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Impact

This Settlement Agreement is a full, final, and binding resolution between Held and Impact of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Impact, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Impact

directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP contained in Products sold or distributed for sale by Impact in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of 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 that he may have against Impact and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP in Products manufactured, sold, or distributed for sale in California by Impact prior to the Effective Date.

4.2 Impact’s Release of Held

Impact, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and his attorneys and other representatives, for any and all actions taken or statements made by Held and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Impact may request in writing that Held draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Held and Impact agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of

judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Impact agrees to reimburse Held and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this Section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Held's counsel for work performed under this Section, Impact will remit payment to the address provided in Section 3.3.1(a)

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. 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 Impact may provide written notice to Held of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICES

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

For Impact:

Bruce Nye
Adams, Nye Becht LLP

222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521
Tel: 415.982.8955
Fax: 415.982.2042

For Held:

The Chanler Group
Attn: Proposition 65 Coordinator
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.

9. 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.

10. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a 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:

Date: _____

Date: 1-14-14

By: _____
Anthony E. Held, PhD., P.E.

By:  _____
Impact Products, LLC

222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521
Tel: 415.982.8955
Fax: 415.982.2042

For Held:

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

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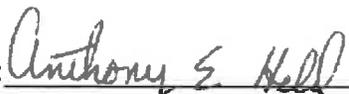
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: January 29, 2013

Date: _____

By: 
Anthony E. Held, PhD., P.E.

By: _____
Impact Products, LLC