

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Southern Exchange, L.P. (“Southern Exchange”) and Anthony Held, Ph.D., P.E. (“Held”). Held is an individual residing in the State of 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. Southern Exchange employs ten (10) 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 Southern Exchange, Big 5 Sporting Goods Corporation, Ariens Company, and Ariens Specialty Brands LLC (“Settling Parties”) have manufactured, distributed, and/or sold in the State of California camping cookware and vinyl/PVC bags, both categories of products containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as camping cookware containing DEHP including, but not limited to, *Texsport 5-Piece Stainless Steel Mess Kit, Item #13156, #00922427, UPC #04974131589*, and vinyl/PVC bags containing DEHP including, but not limited to, *Texsport 16” x 22” Float Bag, Item 22458, UPC #0 49794 22458 2*, manufactured by Southern Exchange which are distributed, and/or sold in the State of California by the Settling Parties (“Products”).

1.4 Notices of Violation

On or about April 30, 2014, Held served Southern Exchange and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on the Settling Parties’ failure to warn consumers that the Products contained DEHP and exposed users in the State of California to DEHP.

On or about March 13, 2015, Held served the Settling Parties and various public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on the Settling Parties’ failure to warn consumers that the Products contained DEHP and exposed users in the State of California to DEHP.

To the best of Held and the Settling Parties’ knowledge, no public enforcer has or is prosecuting the allegations set forth in the Notice or Supplemental Notice.

1.5 No Admission

The Settling Parties deny all factual and legal allegations contained in Held’s Notice and Supplemental Notice, and maintain that all of the Products they have sold and/or offered for sale in the State of California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Settling Parties 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 the Settling Parties of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect Southern Exchange’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 April 30, 2016.

2. REFORMULATION AND WARNINGS

2.1 Reformulation Standard

Commencing on the Effective Date, and continuing thereafter, Southern Exchange shall only manufacture, distribute, ship, sell, or purchase for sale in California, “Reformulated Products” or Products sold with a clear and reasonable warning pursuant to Section 2.3. Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, and suitable for the material being tested. By entering into this Settlement Agreement, Held and the Southern Exchange do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Southern Exchange by laws other than Proposition 65, nor do Held and the Settling Parties intend for this Settlement Agreement to affect any defenses available to the Settling Parties under laws other than Proposition 65.

2.2 Vendor Notification Requirement

To the extent it has not already done so, within thirty (30) business days of the Effective Date, Southern Exchange shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products that will be sold or offered for sale to California citizens and shall instruct each Vendor to use reasonable efforts to provide Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. For purposes of this Settlement Agreement, the term “Vendor” means a person or entity that distributes, sells, or

otherwise supplies the Products or component parts for the Products to Southern Exchange, its parents, assignees, subsidiaries, and/or affiliated entities under common ownership.

2.3 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Southern Exchange shall provide clear and reasonable warnings that state:

WARNING: This product can expose you to DEHP a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm). For more information go to www.P65Warnings.ca.gov/product.¹



or

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

Southern Exchange may affix this warning to the packaging, labeling, or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California. 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, consistent with 27 Cal. Code Regs. § 25603.1(c). Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

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

In settlement of all the claims referred to in this Settlement Agreement, Southern Exchange shall pay a total of \$15,000.00 within ten (10) business days of the Effective Date in one (1) check

¹ Where the label or labeling for the Product is not printed using the color yellow, the symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

made payable as follows: “Anthony Held, Client Trust Account”. The penalty payment will be allocated by Held 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 retained by Held.

4. REIMBURSEMENT OF ATTORNEY FEES AND COSTS

The Settling 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 Settling Parties and Held then attempted to (and did) reach an accord on the compensation due to Held’s 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 and reporting of this Settlement Agreement. Southern Exchange shall pay a total of \$40,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Southern Exchange’s attention, and negotiating a settlement in the public interest. Southern Exchange shall make the check payable to “The Chanler Group,” and deliver payment within ten (10) business days of the Effective Date.

5. PAYMENT PROCEDURES

5.1 Payee Information

All payments owed to Held and Held’s counsel, pursuant to Sections 3 and 4 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

5.2 Issuance of 1099 Forms

After the penalty payment, Southern Exchange shall issue a 1099 Form for the payment to (a) Held for 25% of the penalty payment, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed, and (b) OEHHA for 75% of the penalty payment, who shall be identified as “California Office of Environmental Health Hazard Assessment” (EIH: 68-0284486) in the 1099 Form, to be delivered directly to OEHHA, P. O. Box 4010, Sacramento, California 95814. After the attorney fee payment, Southern Exchange shall issue a 1099 Form for the payment to (c) The Chanler Group, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed.

6. RELEASE OF ALL CLAIMS

6.1 Held’s Release of Settling Parties

This Settlement Agreement is a full, final, and binding resolution between Held, as an individual and not on behalf of the public, and the Settling Parties of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past, current, and future agents, representatives, attorneys, successors, and/or assignees, against the Settling Parties, their parents, subsidiaries, successors, assigns, affiliated entities under common ownership, directors, officers, members, partners, employees, attorneys, and each entity to whom the Settling Parties directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees, and retailers (“Releasees”), based on alleged exposures and/or the alleged failure to warn about potential exposures to DEHP contained in the Products sold, distributed, and/or offered for sale by the Releasees in the State of California as set forth in the Notice and Supplemental Notice before the Effective Date.

In further consideration of the promises and agreements herein contained, Held, as an individual and not on behalf of the public, on behalf of himself, his past, current, and future agents, representatives, attorneys, successors, and/or assignees, hereby waives Held's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to actual or alleged exposures to DEHP in the Products sold, distributed, and/or offered for sale by the Releasees before the Effective Date.

Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows: A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6.2 Southern Exchange's Release of Held

Southern Exchange 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 before the Effective Date, 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.

6.3 No Other Known Claims or Violations

Held and Held's counsel affirm that they are not presently aware of any actual or alleged violations of Proposition 65 by Southern Exchange or for which Southern Exchange bears legal responsibility other than those that are fully resolved hereunder.

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 and/or DEHP, then Southern Exchange 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 sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Southern Exchange:

Ronald Ramsey, President
Southern Exchange, L.P.
1332 Conrad Sauer Drive
Houston, TX 77043

with a copy to:

Kenneth D. Rhodes, Esq.
Gray, Reed & McGraw, P.C.
1300 Post Oak Blvd., Suite 2000
Houston, TX 77056

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; FACSIMILE/PDF 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 (1) and the same document.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of Held and the Settling Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind Held and the Settling Parties.

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

13. MODIFICATION

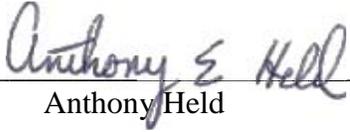
This Settlement Agreement may be modified only by a written agreement of Held and Southern Exchange.

14. 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:

Date: 4/22/2016

By: 
Anthony Held

AGREED TO:

Date: _____

By: _____
Ronald Ramsey, President
Southern Exchange L.P.

AGREED TO:

Date: _____

By: _____
Anthony Held

AGREED TO:

Date: 4/25/16

By: Ronald D. Ramsey
Ronald Ramsey, President
Southern Exchange L.P.