

# **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 Trends International, LLC (“Trends”), with Held and Trends each individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Trends 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 Trends manufactures, sells, and/or distributes for sale in California vinyl/PVC planner covers containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Held alleges that Trends failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC planner covers sold in California.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are vinyl/PVC planner covers containing DEHP including, but not limited to, *Boho Arts 2014-2015 Pocket Planner*, #842071, ISBN 978-1-43882-492-5, UPC #0 57668 84271 8, manufactured, sold and/or distributed for sale in California by Trends (collectively, “Products”).

#### **1.4 Notice of Violation**

On April 30, 2014, Held served Trends and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Trends violated Proposition 65 when it failed 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**

Trends 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 Trends 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 Trends of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Trends. This Section shall not, however, diminish or otherwise affect Trends’ 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 15, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Trends shall be Products that qualify as Reformulated Products as defined in Section 2.1, or shall carry the Proposition 65 warning specified in Section 2.3 below.

## **2.3 Product Warnings**

Commencing on or before the Effective Date, Trends shall provide clear and reasonable warnings as set forth in subsections 2.3(a) for all Products that do not qualify as Reformulated Products. 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.** Trends shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

**(ii) Point-of-Sale Warnings.** Alternatively, Trends 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 Trend's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains DEHP, a phthalate chemical 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:<sup>1</sup>

WARNING: The following products contain DEHP, a phthalate Chemical, known to the State of California to cause birth defects and other reproductive harm:  
*[list products for which warning is required]*

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement, Trends agrees to pay \$8,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Held. Trends shall issue the above payments as follows:

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, Trends shall pay an initial civil penalty of \$3,000. Trends will provide its payment “Anthony E. Held, Client Trust Account” in the amount of \$3,000.

**3.1.2 Final Civil Penalty.** On or before July 30, 2015, Trends shall pay a final civil penalty of \$5,500. The final civil penalty shall be waived in its entirety if, no later than June 15, 2015, an officer of Trends provides Held’s counsel with written certification that, as of the date of its certification, all of the Products it manufactures, imports, distributes, sells, and offers for sale in California are Reformulated Products as defined by Section 2, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making

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<sup>1</sup>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.

the final civil penalty payment otherwise required by this Agreement is a material term, and time is of the essence. In the event that Trends does not provide certification pursuant to this Section 3.1.2, Trends shall issue a check for its final civil penalty payments to “Anthony E. Held, Client Trust Account” in the amount of \$5,500.

### **3.2 Reimbursement of Held’s Attorneys’ 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Trends expressed a desire to resolve the fee and cost issue. 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. Trends shall pay \$23,250 for fees and costs incurred as a result of investigating, bringing this matter to Trends’ attention, negotiating a settlement in the public interest, and seeking court approval. Trends 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(a) below.

### **3.3 Payment Procedures**

**3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments required for OEHHA, Held, and his counsel under this Settlement Agreement shall be delivered to:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Held's Release of Trends**

This Settlement Agreement is a full, final and binding resolution between Held and Trends, 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 Trends, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Trends directly or indirectly distributes or sells 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 DEHP in Products that Trends sold or distributed for sale by Trends prior to the Effective Date. This release is provided in Held's individual capacity and is not a release on behalf of the public.

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 any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Trends before the Effective Date. The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and are not releases on behalf of the public.

**4.2 Trends' Release of Held**

Trends 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.

**5. 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.

**6. 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 Trends may 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.

**7. NOTICE**

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

For Trends:

Phil St. Jean, President  
Trends International, LLC  
5188 West 74<sup>th</sup> Street  
Indianapolis, IN 46268

For Held:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

with a copy to:

Levi Heath, Esq.  
Barnes & Thornburg, LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

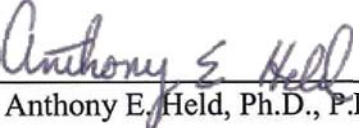
This Settlement Agreement may be modified only by written agreement of the Parties.

**11. 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: January 12, 2015

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

**AGREED TO:**

Date: January 8, 2015.

By:   
Phil St. Jean, President  
TRENDS INTERNATIONAL, LLC