

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Interline Brands, Inc.**

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Interline Brands, Inc. (“Interline”), with Held and Interline collectively referred to 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. Interline 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Held alleges that Interline has manufactured, imported, distributed and/or sold certain products in the State of California containing both di(2-ethylhexyl)phthalate (“DEHP”) and lead. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as: (i) *Pro Plus Ball Valve, Mfg# 102623, UPC #0 76335 10265 8*; and (ii) *Legend 12 Piece Punch & Chisel Set, #822180, UPC #0 76335 82280 8*, both of which are or were manufactured, imported, distributed, sold and/or offered for sale by Interline in the State of California, hereinafter collectively the “Products.”

### **1.4 Notice of Violation**

On June 20, 2014, Held served Interline and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Interline was in violation of California Health & Safety Code § 25249.6 for failing to

warn consumers that the Products exposed users in California to DEHP and lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Interline denies the material, factual and legal allegations contained in Held's Notice and maintains that all 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 Interline of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Interline of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the 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 1, 2015.

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

**2.1 Reformulation Standards**

Reformulated Products are defined as those Products: (i) containing a maximum of 100 parts per million of lead by weight when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol; and (ii) 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 any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

## **2.2 Reformulation Commitment**

As of the Effective Date, Interline shall not manufacture, order from its suppliers, or cause to be ordered from its suppliers, Products for sale in the State of California that are not Reformulated Products pursuant to Section 2.1 above, or do not carry the Proposition 65 warnings specified in Section 2.3 below.

## **2.3 Product Warnings**

Interline shall provide clear and reasonable warnings for all Products it manufactures, orders from its suppliers or causes to be ordered from its suppliers after April 1, 2015, as set forth in subsections 2.3(a) and (b) 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.** Interline shall affix a warning to the packaging, labeling, or directly on each Product intended for sale in retail outlets in California that states:

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

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

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

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

WARNING: This product contains chemicals known to the State of California to cause cancer and 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, lead and/or other chemicals known to the State of California to cause cancer and birth defects and other reproductive harm:

*[list products for which warning is required]*

or,

WARNING: The following products contain chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Interline sells Products via mail order catalog and/or the internet, to customers located in California, that are not Reformulated Products, Interline shall provide warnings for such Products sold via mail order catalog or the internet to California residents as set forth below. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

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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.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Interline may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog, on the same page as any order form for the Product(s), or on a page dedicated to other symbols used throughout the catalogue:

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

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

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Interline must provide a header or footer directing the consumer to the warning language and definition of the designated symbol. Interline shall be in compliance with this section if it provides such warnings in the next scheduled print cycle for each brand mail catalog printed on or after June 30, 2015.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products that were manufactured or ordered by Interline from its suppliers after the Effective date via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: This product contains DEHP, lead and/or other chemicals known to the State to California to cause cancer and birth defects and other reproductive harm.

or,

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

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

On, or before March 1, 2015, Interline shall pay a civil penalty in the amount of \$12,000 in settlement of all claims referred to in this Settlement Agreement. The 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. Interline shall issue a check to “The Chanler Group in Trust for Held” in the amount of \$12,000. The penalty payment 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

**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. Interline shall pay \$26,700 for fees and costs incurred as a result of investigating, bringing this matter to Interline’s attention, and negotiating a settlement in the public interest. Interline 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 March 1, 2015, to the address listed in Section 3 above.

**5. RELEASES**

**5.1 Held’s Release of Interline**

This release is provided in Held’s individual capacity and is not a release on behalf of public. This Settlement Agreement is a full, final and binding resolution between Held and Interline 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 Interline, its parents, subsidiaries, affiliated entities under common ownership,

directors, officers, employees, attorneys and each entity to whom Interline directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), from all claims for violations of Proposition 65 relating to Products ordered by Interline from its suppliers or manufactured by Interline before the Effective Date based on their failure to warn about alleged exposures to DEHP and lead contained in the Products set forth in the Notice. 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 of 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 DEHP and lead in the Products manufactured, imported distributed, ordered from its suppliers, sold and/or offered for sale by Interline before the Effective Date (collectively “claims”), against Interline and Releasees.

## **5.2 Interline’s Release of Held**

Interline, 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. 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.

**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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Interline 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. Nothing in this Settlement Agreement shall be interpreted to relieve Interline from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

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

For Interline:

Shelley Hurwitz, Esq.  
Holland & Knight  
400 South Hope Street, 8th Floor  
Los Angeles CA 90071

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.

**9. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**11. MODIFICATION**

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

**12. AUTHORIZATION**

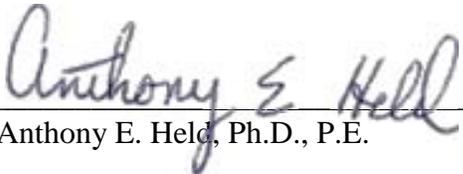
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: February 25, 2015

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

Interline Brands, Inc.

9. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Held agrees to comply with the reporting requirements referenced in Health & Safety Code § 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 and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: February 26, 2015

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

By:   
Interline Brands, Inc.