

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, PhD., P.E. and Dennis East International, LLC**

This Settlement Agreement is entered into by and between Anthony E. Held, PhD., P.E. (“Held”) and Dennis East International, LLC. (“Dennis East”), with Held and Dennis East collectively referred to as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Dennis East employs ten or more persons in each entity and each entity 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 Dennis East has manufactured, imported, distributed, sold, and/or offered for sale in the State of California vinyl/PVC eyewear containers containing di (2-ethylhexyl) phthalate (“DEHP”), without the requisite Proposition 65 health hazard warnings. DEHP is known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are a category of products referred to as vinyl/PVC eyewear containers, which includes, but not limited to, the *Eyewear Case Item No. 10280, UPC #7 47552 10280 5*, manufactured, imported, distributed, shipped, sold and/or offered for sale or shipment by Dennis East in the State of California, hereinafter “Products.”

### **1.4 Notice of Violation**

On August 28, 2014, Held served Dennis East and various public enforcement agencies with a document entitled, “60-Day Notice of Violation” (“Notice”), which

provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in California 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**

Dennis East denies the material, factual and legal allegations contained in Held's Notice and maintains that all products that it has sold, manufactured, imported, distributed, and/or offered 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 Dennis East 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 Dennis East of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Dennis East's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall be December 15, 2014.

## **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNING**

### **2.1 Commitment to Reformulate Products**

Commencing no later than May 1, 2015, and continuing thereafter, Dennis East commits that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products."

### **2.2 Reformulation Standards**

For purposes of this Settlement Agreement, Reformulated Products comply with the following content limits: DEHP in concentration less than 1,000 parts per million ("ppm") by weight in any Accessible Component (i.e. any component that may be touched or handled during a reasonably foreseeable use) 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.

### **2.3     Warnings**

Dennis East agrees, promises, and represents that, as of the Effective Date to May 1, 2015, to the extent it ships or distributes any Products in existing inventory that have not been reformulated to California, it will provide warnings on such Products that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling stating that:

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

## **3.     PAYMENT OF PENALTIES**

Pursuant to Health & Safety Code §25249.7(b), Dennis East shall pay a total of \$12,000.00 in civil penalties.

### **3.1     Initial Civil Penalty**

In settlement of all the claims referred to in this Settlement Agreement, on or before the Effective Date, Dennis East shall pay an initial civil penalty in the amount of \$2,000.00. The civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony E. Held. Dennis East shall issue two separate checks for the penalty payment: (a) one check made payable to OEHHA in the amount of \$1,500.00 representing 75% of the total penalty; and (b) one check to “The

Chanler Group in Trust for Anthony E. Held” in the amount of \$500.00 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 below.

### **3.2 Final Civil Penalty**

Pursuant to Health & Safety Code § 25249.7(b), on May 1, 2015, Dennis East shall pay a final civil penalty in the amount \$10,000.00. The final civil penalty shall be waived in its entirety, if, on or before April 15, 2015, an officer of Dennis East certifies to Held’s counsel, in writing, that all Products sold or offered for sale by Dennis East in California after May 1, 2015, are Reformulated Products, and that Dennis East will continue to do so after the date of certification.

Unless waived, the final civil penalty shall be allocated according to Health & Safety Code § 25249.7(c)(1) and (d), with 75% of the penalty payment earmarked for OEHHA, and the remaining 25% of the penalty earmarked for Held. Dennis East shall issue two separate checks for the final penalty payment: (a) one check made payable to OEHHA in the amount of \$7,500.00 representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Anthony E. Held” in the amount of \$2,500.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The checks and 1099s shall be delivered to the addresses listed in Section 3.3 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 through 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 through 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

A copy of the checks payable to OEHHA shall be mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

#### **4. REIMBURSEMENT OF ATTORNEY’S 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 issue to be resolved after the material terms of the agreement had been settled. Dennis East 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 (“CCP”) § 1021.5, for all work performed through the mutual execution of this agreement. Dennis East shall reimburse Held and his counsel \$25,500.00 or fees and

costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. Dennis East 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 following address:

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

## **5. RELEASES**

### **5.1 Held's Release of Dennis East**

This Settlement Agreement is a full, final and binding resolution between Held and Dennis East 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, assignees against Dennis East, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dennis East directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, shipped, sold and/or offered for sale or shipment by Dennis East in California prior to 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 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-- limited to and

arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, shipped, sold and/or offered for sale or shipment by Releasees prior to the Effective Date (collectively “claims”), against Releasees. Held acknowledges that it is familiar with Section 1542 of 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.

Held, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

## **5.2 Dennis East’s Release of Held**

Dennis East 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, preempted 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 Dennis East 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 Dennis East from an obligation to comply with any pertinent state or federal toxic control laws.

**8. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the 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 any of the parties.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or 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:

To Dennis East:

Melissa Jones, Esq.  
Stoel Rives LLP  
500 Capital Mall, Suite 1600  
Sacramento, CA 95814

To 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 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. A facsimile or pdf signature shall be as valid as the original.

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

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

**12. MODIFICATION**

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

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**13. 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: December 3, 2014

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

By: Anthony E. Held  
Anthony E. Held

By: \_\_\_\_\_  
President  
Dennis East International, LLC

13. **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.

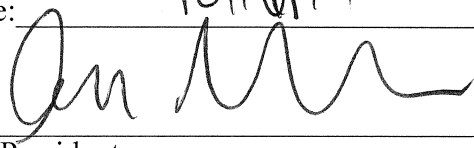
AGREED TO:

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

By: \_\_\_\_\_  
Anthony E.. Held

AGREED TO:

Date: 12/18/14 \_\_\_\_\_

By:  \_\_\_\_\_  
President  
Dennis East International, LLC