

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

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

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Radians, Inc. (“Radians”), with Held and Radians 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. Radians 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 Radians manufactures, importes, distributes and/or sells in the State of California vinyl/PVC ear plug chords, and hearing protection with vinyl/PVC ear cushions containing Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical 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 defined as vinyl/PVC ear plug chords containing DEHP, including, but not limited to, the *Work Gear Safety Set, #1051956, UPC #6 74326 26312 0*, and hearing protection with vinyl/PVC ear cushions containing DEHP including, but not limited to, *Radians Pink Low Set, LS0800CS, UPC #6 74326 22585 2*, which are manufactured, imported, distributed, sold and/or offered for sale by Radians in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On August 28, 2014, Held served Radians and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with

notice that Radians was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Radians 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 Radians of any fact, conclusion, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Radians of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Radians. 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 February 28, 2015.

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

**2.1 Reformulation Standards**

Reformulated Products are defined as 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 any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

**2.2 Injunctive Commitment**

As of the March 30, 2015, Radians shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

### **2.3 Product Warnings**

Commencing on or before March 30, 2015, Radians shall provide clear and reasonable warnings for the Products as set forth in subsections 2.3(a) and (b) for the 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.** As of March 30, 2015, and continuing thereafter, Radians 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.

Or, in the alternative:

WARNING: This product contains chemicals known to the state of California to cause birth defects or other reproductive harm.

**(b) Mail Order Catalog and Internet Sales.** In the event that Radians sells the Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that is not a Reformulated Product, Radians shall provide warnings for such Products sold via Radians' mail order catalog or Radians' internet website to California residents. Warnings given by Radians in Radians' mail order catalog or on Radians' internet websites shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a Radians mail order catalog shall be in the same type size or larger than the Products 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 Products:

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

Or, in the alternative:

**WARNING:** This product contains chemicals known to the state of California to cause birth defects or 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 Products, Radians 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 or on the same page as any order form for the Products:

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or, in the alternative:

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalogue contain chemicals known to the state of California to cause birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Products. On each page where the designated symbol appears, Radians must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with Radians' sale of the Products via the internet, which warning shall appear either: (a) on the same Radians web page on which Products are displayed; (b) on the same Radians web page as the order form for the Products; (c) on the same Radians web page as the price for any Product; or (d) on one or more Radians 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 Products for which it is given in the same type size or larger than the Product description text:

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

Or, in the alternative:

WARNING: This product contains chemicals known to the state of California to cause birth defects or other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Products 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, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Or, in the alternative:

WARNING: This product contains chemicals known to the state of California to cause birth defects or other reproductive harm.

The mail order catalog and website warnings provided for herein are not required of any third party retailers or other resellers of the Products, and are required only in mail order catalogs and websites utilized by Radians in connection with the sale of the Products.

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

In settlement of all the claims referred to in this Settlement Agreement, Radians has been assessed a total of \$31,000 in civil penalties in accordance with this Section. Each 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, as follows:

**3.1 Initial Civil Penalty**

Radians shall pay an initial civil penalty in the amount of \$6,000 on or before the Effective Date. Radians shall issue a check to: “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$6,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

Radians shall pay a final civil penalty of \$25,000 on or before December 15, 2015. The final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2015, an officer of Radians provides Held with written certification that, as of the date of such certification and continuing into the future, Radians has met the reformulation standard specified in Section 2.1 above, such that the Products manufactured, imported, distributed, sold and offered for sale in California by Radians are Reformulated Products. Held must receive any such certification on or before December 1, 2015. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Radians shall issue a check for its final civil penalty payments to: “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$25,000 which shall be paid in accordance with 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 OEHHA and Held, pursuant to Sections 3.1 and 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

**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. Radians shall pay \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to Radians' attention, and negotiating a settlement. Radians shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1 above.

**5. RELEASES**

**5.1 Held's Release of Radians**

This Settlement Agreement is a full, final and binding resolution between Held and Radians 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 Radians, its parents, subsidiaries, affiliated entities under common ownership, divisions, directors, officers, employees, attorneys and each entity to whom Radians directly or indirectly distributes or sells the Products and their present and former agents, attorneys, representatives, directors, officers, and employees, and their respective predecessors, successors, parent, affiliates, subsidiaries, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, imported,

distributed, sold and/or offered for sale by Radians in California before 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 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 -- limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by Radians before the Effective Date (collectively "claims"), against Radians and Releasees.

## **5.2 Radians' Release of Held**

Radians, 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 Radians 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.

In the event that the regulatory requirements of Proposition 65 are changed by OEHHA, including modifications to the warning language safe harbor provisions, Radians shall provide written notice to Held of any asserted change in the law, and shall meet and confer with Held's counsel within 30 days to provide for and ensure Radians' compliance with the terms of this Settlement Agreement and applicable OEHHA regulations, which may include an agreed upon modification of this Settlement Agreement. This Settlement may be modified only by a written agreement of the Parties. Nothing in this Settlement Agreement shall be interpreted to relieve Radians 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 Radians:

Mike Tutor, CEO  
Radians, Inc.  
5305 Distriplex Farms Drive  
Memphis, IN 38141

With a copy to:

Paul Billings, Esq.  
Paul Billings Law  
5305 Distriplex Farms Drive  
Memphis, TN 38141-8231

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**

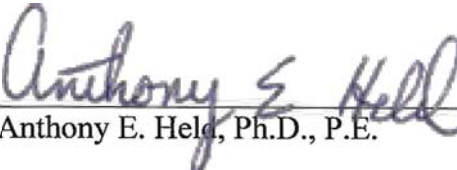
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: February 23, 2015

Date: 2/20/15

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

By:   
Mike Tutor, CEO,  
Radians, Inc.