

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 Betty Dain Creations, LLC. (“Betty”), with Held and Betty 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. Held alleges that Betty 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 Betty manufactures, sells, and/or distributes for sale in California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Held alleges that Betty failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its vinyl/PVC gloves.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC gloves containing DINP including, but not limited to, the *Colortrak Gloves Powder Free Vinyl Gloves, CT102VPPF-M, UPC #0 28272 60315 6*, (“Products”) as well as the *Kiddie Cape Silly Birds Shampoo Cape, Item No. 271:260010, UPC #0 13534 10198 3*, *Street Savvy Apron, Item No. 7900, UPC #0 13534 34148 8*, and the *Chair Back Cover Deluxe, Item No. 197:260197, UPC #0 13534 60069 1*, (“Additional Products”) manufactured, sold or distributed for sale in California by Betty.¹

¹ Based on Plaintiff’s continued investigation, the Parties are aware that certain Additional Products contain DINP, and Betty has agreed to include these Additional Products in this Settlement and to

1.4 Notice of Violation

On or about April 24, 2015, Held served Betty, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Betty violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to DINP. 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

Betty 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 Betty 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 Betty of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Betty. However, this Section shall not diminish or otherwise affect Betty’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 March 15, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Betty agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products”, or Products and Additional Products containing appropriate health hazard warnings as described in Section 2.2. For purposes of this Settlement Agreement, “Reformulated

apply the injunctive terms to Additional Products as well as the Products.

Products” are Products and Additional Products containing DINP 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 DINP content in a solid substance.

2.2 Product Warnings

As of the Effective Date, Betty shall, for all Products and Additional Products other than Reformulated Products, provide clear and reasonable warnings as set forth in subsection 2.2(a). 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 or Additional Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Betty shall affix a warning to the packaging, labeling, or directly on each Product or Additional Product sold in retail outlets in California by Betty or any person selling the Products or Additional Products, that states:

WARNING: This product contains a chemical known to the State of California to cause cancer.

(ii) Point-of-Sale Warnings. Alternatively, Betty 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 or Additional Products. Such instruction sent to Betty’s customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains a chemical known to the State of California to cause cancer.

Where more than one Product or Additional 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 must be used:¹

WARNING: The following products contain a chemical known to the State of California to cause cancer:

(b) Mail Order Catalog and Internet Sales. In the event that Betty sells Products or Additional Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Betty shall provide warnings for such Products or Additional Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product or Additional Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

WARNING: This product contains a chemical known to the State of California to cause cancer.

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 or Additional Product,

¹For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another 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.

Betty 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 Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product or Additional Product. On each page where the designated symbol appears, Betty 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 the sale of the Products or Additional Products via the internet, which warning shall appear either: (a) on the same web page on which a Product or Additional Product is displayed; (b) on the same web page as the order form for a Product or Additional Product; (c) on the same page as the price for any Product or Additional 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 or Additional Product for which it is given in the same type size or larger than the description text:

WARNING: This product contains a chemical known to the State of California to cause cancer.

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: Products identified on this page with the following symbol ▼ contain a chemical known to the State of California to cause cancer.

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 Agreement, Betty agrees to pay \$7,250 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. Held and his counsel will deliver the appropriate 75% portion of all civil penalties paid to OEHHA.

3.1.1 Initial Civil Penalty. On or before the Effective Date, Betty shall pay an initial civil penalty in the amount of \$2,250. Betty will provide its payment in a check for the following amounts made payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$2,250.

3.1.2 Final Civil Penalty. On or before December 30, 2016, Betty shall pay a final civil penalty of \$5,000. The final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2016, an officer of Betty provides Held’s counsel with written certification that, as of the date of the certification, all Products and Additional Products shipped, sold or distributed for sale in California are Reformulated Products, and that they will continue to provide only Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of warning and making the final civil penalty payment required by this Section is a material term, and time is of the essence. Betty shall deliver its certificate, if any, to Held’s counsel at the address provided in Section 3.3, below. In the event that Betty does not timely certify its

compliance or make the final civil penalty payment required by this Section, Held may seek relief under any available legal remedy. If successful, the Parties further agree that Held shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Betty agrees to pay \$17,500 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Betty's management, and negotiating a settlement in the public interest. Betty's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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 Betty

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and not on behalf of the public, and Betty, of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against Betty, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

attorneys, and each entity to whom Betty directly or indirectly distributes or sells Products or Additional Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the failure to warn about alleged exposures to DINP contained in Products and Additional Products manufactured, distributed, sold or offered for sale by Betty in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Held, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and 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 arising under Proposition 65 with respect to Products or Additional Products manufactured, distributed, sold and/or offered for sale by Betty before the date that this Settlement Agreement is fully executed by the Parties.

4.2 Betty’s Release of Held

Betty, on its own behalf, and on behalf of 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 and Additional 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 otherwise rendered inapplicable by reason of law generally, as to Betty specifically as a result of a statutory exemption, or as to the Products, then Betty may provide written notice to Held of any asserted change in the law, or its applicability to Betty or the Products or the Additional Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Betty or the Products or Additional Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice 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 Betty:

Don Leebow, President
Betty Dain Creations, LLC.
9701 NW 112th Ave.
Medley, FL 33178

For Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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.

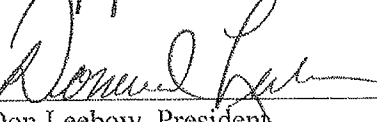
AGREED TO:

Date: _____

By: _____
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

Date: 3/2/16 _____

By:  _____
Don Leebow, President
Betty Dain Creations, LLC.

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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: 3/2/16 _____

By: Anthony E. Held
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

Date: _____

By: _____
Gerald Leebow, President
Betty Dain Creations, LLC.