

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 M.Z. Berger & Company, Inc. ("M.Z. Berger") with Held and M.Z. Berger 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. M.Z. Berger 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 M.Z. Berger manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, vinyl/PVC watch boxes that contain the phthalate chemical di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC watch boxes containing DEHP, that are manufactured, sold and/or distributed for sale in California by M.Z. Berger, including, but not limited to the, *Sofia Vergara Watch Box, KSN: 0-05306908-4, UPC #0 49353 86817 2*) (collectively, "Products").

1.4 Notice of Violation

On April 29, 2015 Held served M.Z. Berger and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that M.Z. Berger 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

M.Z. Berger 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 M.Z. Berger 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 M.Z. Berger of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by M.Z. Berger. This Section shall not, however, diminish or otherwise affect M.Z. Berger'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 December 1, 2015.

2. INJUNCTIVE RELIEF

2.1 REFORMULATED PRODUCTS

Commencing on March 1, 2016 and continuing hereafter, M.Z. Berger shall only purchase for sale or manufacture for sale in California: (a) "Reformulated Products," or (b) Products that bear a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 ppm (0.1%) DEHP content in any component

analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings: Product Labeling

Commencing three months from the Effective Date, for all Products other than Reformulated Products, M.Z. Berger shall provide clear and reasonable warnings that state:

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

or

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.)

M.Z. Berger may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale within the State of California. 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(s) the warning applies, so as to minimize the risk of consumer confusion.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, M.Z. Berger agrees to pay \$10,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with

75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% of the penalty amount paid to Held. Held's counsel shall be responsible for remitting M.Z. Berger's penalty payment(s) under this settlement to OEHHA.

3.1.1 Initial Civil Penalty. Within two days of the Effective Date, M.Z. Berger shall pay an initial civil penalty of \$2,500. M.Z. Berger shall provide its payment in a single check made payable to "Anthony E. Held, Ph.D., P.E.'s Client Trust Account", to be delivered to the address provided in section 3.3, below.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation. On February 27, 2016, M.Z. Berger shall make a final civil penalty payment of \$7,500. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than February 16, 2016, an officer of M.Z. Berger provides Held with an original, signed written certification that all of the Products it ships for sale or distributes for sale in California as of the date of its certification are Reformulated Products, and that M.Z. Berger will continue to offer only Reformulated Products in California in the future. Alternatively, M.Z. Berger may provide a declaration certifying that it no longer sells or distributes the Products for sale in California, and if it recommences sales of the Products in California in the future, it will only offer Reformulated Products. The option to provide a certification under this Section in lieu of making the final civil penalty payment is a material term, and time is of the essence. M.Z. Berger shall deliver its certificate, if any, to Held's counsel at the address provided in Section 3.3, below.

3.2 Reimbursement of Held's 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, within five days of the Effective Date, M.Z. Berger agrees to pay

\$20,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of M.Z. Berger’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments required by this Consent Judgment 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 M.Z. Berger

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and not on behalf of the public, and M.Z. Berger, of any violation of Proposition 65 that was or could have been asserted by Held on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against M.Z. Berger, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom M.Z. Berger directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, including all K-Mart affiliated entities (“Releasees”), based on the alleged failure to warn about exposures to DEHP in Products sold or distributed for sale by M.Z. Berger prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, as an individual and not on behalf of the public, on his own behalf and on behalf of 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, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP from Products sold or distributed for sale by M.Z. Berger 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 M.Z. Berger's Release of Held

M.Z. Berger 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, 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 remaining enforceable provisions 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 M.Z. Berger 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 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 M.Z. Berger:
Margo Madden
Senior Vice President Strategic Operations
M.Z. Berger & Co., Inc.
1976 Northern Boulevard, Floor 4
Long Island City, NY 11101

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

Greenberg Traurig, LLP
Anthony Cortez
1201 K Street, Suite 1100
Sacramento, CA 95814

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: 11/20/2015

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

AGREED TO:

Date: 11/20/2015

By: M. Z. Berger & Co., Inc.
M.Z. Berger & Co., Inc.