

# 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 Neiman Marcus Group LTD LLC (“Neiman”), with Held and Neiman 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 Neiman 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 Neiman has sold and distributed for sale in California, earmuffs with vinyl/PVC cords that contain di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Held alleges that Neiman failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the vinyl/PVC cords components of its earmuffs.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are earmuffs with vinyl/PVC cords containing DEHP that are imported, sold, or distributed for sale in California by Neiman including, but not limited to, the *Neiman Marcus Wired Earmuff, Style# YD001-NMEM, #737-30-5295-00006-0, #810383021215*, hereinafter the “Products.”

#### **1.4 Notice of Violation**

On April 29, 2015, Held served Neiman and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Neiman violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the alleged violations that are the subject of the Notice.

#### **1.5 No Admission**

Neiman denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold or distributed 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 Neiman 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 Neiman of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Neiman. This Section shall not, however, diminish or otherwise affect Neiman’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 October 16, 2015.

### **2. INJUNCTIVE RELIEF**

#### **2.1 Commitment to Provide Reformulated Products or Warnings**

Commencing within 30 days of the Effective Date and continuing thereafter, Neiman shall only place orders to purchase for sale in California (a) Reformulated Products; or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, “Reformulated Products” are earmuffs with vinyl/PVC cords with a maximum DEHP content of no more

than 1,000 parts per million (0.1%) when prepared and analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

Commencing within 30 days of the Effective Date, for all Products sold in California other than Reformulated Products, Neiman agrees to only place orders to purchase such products for sale in California with a warning in accordance with this Section. Neiman further agrees that any warning utilized shall be prominently placed in relation to the Product with such conspicuousness when compared to other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Settlement Agreement a clear and reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to a Product that contains the following statement:

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

## **2.3 Commitment to Notify Vendors of Reformulation Standard**

No later than 30 days after the Effective Date, to the extent it has not already done so, Neiman shall provide written notice to all of its vendors of Products that are sold or offered for sale in California and, thereafter, for each subsequently-engaged vendor, if any, instructing each vendor to provide only Reformulated Products (i.e., Products with no more than 1,000 ppm DEHP content). In addressing the obligation set forth in the preceding sentence, Neiman shall not employ statements to encourage a vendor to delay compliance with Neiman's request.

### **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, Neiman agrees to pay \$5,000 in civil penalties. The 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”) and the remaining 25% of the penalty amount paid to Held. Neiman shall deliver its payment within ten days of the later of the Effective Date and receipt of Form W-9 for Plaintiff in a single check made payable to “Anthony E. Held, Client Trust Account.” Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment(s) to OEHHA.

#### **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, within ten days of the later of the Effective Date or receipt of W-9 forms for Plaintiff and Plaintiff’s counsel, Neiman will pay \$26,000 for all fees and costs incurred investigating, bringing this matter to the attention of Neiman’s management, and negotiating a settlement in the public interest. Neiman’s payment shall be delivered in the form of a check made payable to “The Chanler Group.”

#### **3.3 Payment Address**

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

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 Neiman**

This Settlement Agreement is a full, final and binding resolution between Held and Neiman, of any violation of Proposition 65 that was or could have been asserted by Held on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees against Neiman and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity that manufactures, imports, distributes or sells the Products to Neiman, directly or indirectly, including but not limited to Neiman's upstream manufacturers, importers, distributors, and franchisers, if any ("Upstream Releasees") for any violation arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Neiman prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold or distributed for sale by Neiman after the Effective Date. The Parties agree and understand that the Upstream Releasees are only released for Products sold in California by Neiman before the Effective Date.

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 assignees, hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action against Neiman and/or Releasees and/or Upstream Releasees, and releases all claims including, without limitation, all actions and causes of action in law and in equity, 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 DEHP in Products distributed, sold or offered for sale by Neiman 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 Neiman's Release of Held**

Neiman, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements 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. DISMISSAL OF HELD V. THE NEIMAN MARCUS GROUP LLC**

On the later of 15 days following the Effective Date or 15 days after Held's receipt of the civil penalty and fee reimbursement payments required by Sections 3.1 and 3.2, Held agrees to file a dismissal of the entire action without prejudice involving a Neiman affiliate pending in San Francisco Superior Court, *Held v. The Neiman Marcus Group LLC*, Case No. CGC-15-546937.

**6. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Held agrees that for a claimed breach of this Settlement Agreement by Neiman after the Effective Date relating to the chemical content of the Product(s), that he will provide 30 days' notice of the alleged breach to Neiman and allow Neiman an opportunity to correct the alleged violation(s) to Held's reasonable satisfaction, including, without limitation, by recalling Products in the California market, before taking any further legal action. The Parties further agree and understand that the notice and opportunity to cure provision of this Section 6 shall not apply to an application or motion to enforce the monetary settlement terms specified in Section 3.

**7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the

remaining provisions shall not be adversely affected.

**8. 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 or as to the Products, then Neiman may provide written notice to Held of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. If there is a future revision of Title 27, California Code of Regulations, Article 6, section 25601, *et seq.* relating to the content of any warning required for exposures to DEHP from the Products, then Neiman may use the statutory warning language required by the regulations, as revised, to warn of the risks of birth defects and reproductive harm caused by exposures to DEHP from the Products.

**9. 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 Neiman:

Tracy Preston  
Senior Vice President and General Counsel  
Neiman Marcus Group LTD LLC  
One Marcus Square, 1618 Main Street  
Dallas, TX 75201

with a copy to:

Michelle Amy Morgan  
Vice President and Assistant General Counsel  
The Neiman Marcus Group LLC  
One Marcus Square, 1618 Main Street  
Dallas, TX 75201

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.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**11. 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).

**12. MODIFICATION**

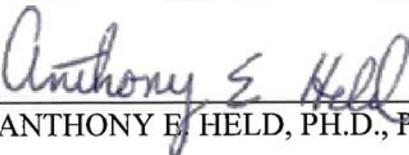
This Settlement Agreement may be modified only by a written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and that they have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

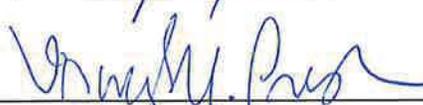
**AGREED TO:**

Date: 10/15/2015

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

**AGREED TO:**

Date: 10/14/15

By:   
Tracy Preston, Senior Vice President and  
General Counsel  
NEIMAN MARCUS GROUP LTD LLC