

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 Spilo Worldwide, Inc. (“Spilo”), with Held and Spilo 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. Spilo 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Spilo manufactures, sells, and/or distributes for sale in California, vinyl/PVC gloves and vinyl/PVC bags containing diisononyl phthalate (“DINP”). DINP was listed on December 20, 2013 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. The warning obligations became effective one year later, on December 20, 2014. Held alleges that Spilo failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its vinyl/PVC gloves and vinyl/PVC bags.

1.3 Product Description

The products covered by this Settlement Agreement are defined as vinyl/PVC gloves containing DINP including, without limitation, the *Spilo Color Accessories Professional Vinyl Gloves, GLO100, UPC #7 22195 53701 6*, Spilo manufactured, sold or distributed for sale in California, or will manufacture, sell or distribute for sale in California and vinyl/PVC bags containing DINP that are associated with Hairware DIY Runway Hairstyle Kits including, without limitation, the *Hairware DIY Runway*

Hairstyle Kits, Spilo items HW014H and HW014HB, Spilo manufactured, sold or distributed for sale in California, or will manufacture, sell or distribute for sale in California (hereinafter “Products”).

1.4 Notice of Violation

On July 13, 2015, Held served Spilo and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Spilo violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DINP in the Products (with the exception of the Hairware DIY Runway Hairstyle Kits). 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

Spilo denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and 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 Spilo 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 Spilo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Spilo. Nothing in this Settlement Agreement shall preclude Spilo from asserting any and all applicable defenses available to it in any future proceeding under Proposition 65 or otherwise. This Section shall not, however, diminish or otherwise affect Spilo’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 thirty (30) days following the mutual execution of this Settlement Agreement.

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

2.1 **Reformulated Products**

For purposes of this Settlement Agreement, “Reformulated Products” are Products containing a maximum concentration of 1,000 parts per million (0.1%) DINP when 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 DINP content in a solid substance.

2.2 **Reformulation Commitment**

On or before the Effective Date and continuing thereafter, Spilo agrees that all Products manufactured, distributed, sold and/or offered for sale in California by Spilo shall be either (a) “Reformulated Products” pursuant to Section 2.1, above or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.3, below.

2.3 **Product Warnings**

If required, 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 of purchase and use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to Products sold in California and containing one of the following statements:

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

Or

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

2.4 **Products in Spilo’s Inventory**

Spilo represents that it currently provides a health hazard warning for the

Products. Spilo further represents that it has provided all customers known to have purchased the Products between December 20, 2014 and July 2015 with a health hazard warning and health hazard warning labels to affix to any inventory in their possession that did not already have a warning (with the exception of the Hairware DIY Runway Hairstyle Kits). All Products sold or distributed for sale by Spilo prior to the Effective Date without a warning are subject to the release provided by Sections 4.1 and 4.2 of this Settlement Agreement.

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, on or before February 29, 2016, Spilo agrees to pay \$4000.00 in civil penalties in a single check payable to “Anthony E. Held, Client Trust Account.” The civil 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 delivering OEHHA’s portion of the civil penalty payment to OEHHA.

3.2 Reimbursement of Held’s Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Spilo expressed a desire to resolve Held’s 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, on or before February 29, 2016, Spilo agrees to pay

\$16,800.00 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 Spilo’s management, and negotiating a settlement in the public interest.

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 Spilo

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public, and Spilo, 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/or assignees (“Releasers”), and Releasers hereby release any such claims, against Spilo, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Spilo directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged or actual failure to warn about exposures to DINP from Products manufactured, distributed, sold or offered for sale by Spilo in California prior to the Effective Date.

In further consideration of the promises and agreements contained herein, Held, on his own behalf and *not* on behalf of the public, 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 alleged exposures to DINP resulting from Products manufactured, distributed, sold and/or offered for sale by Spilo prior to the Effective Date.

Held acknowledges that he is familiar with Section 1542 of the California 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, as an individual and *not* on behalf of the public, 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 Section 1542 of the California Civil Code 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 Products manufactured, imported, distributed or sold by Spilo before the Effective Date.

4.2 Spilo's Release of Held

Spilo, 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 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.

Spilo acknowledges that it is familiar with Section 1542 of the California 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.

Spilo expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to Products manufactured, imported, distributed or sold by Spilo before the Effective Date.

4.3 Deemed Compliance with Proposition 65

Compliance by Spilo with this Settlement Agreement constitutes compliance with Proposition 65 with respect to alleged exposures to DINP from the Products.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Spilo under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Spilo's intent by entering into this Agreement that to the extent any other private party initiates an action against Spilo alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to DINP from Products manufactured, distributed, sold or offered for sale by Spilo in California, and subject to Spilo's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products addressed under this Agreement.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this

Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Spilo 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.

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 to the following addressees:

For Spilo:

Marc Spilo, President
Spilo Worldwide Inc.
2950 E. Vernon Avenue
Vernon, CA 90058

For Held:

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

With a copy to:

Rohit A. Sabnis
Burnham Brown
1901 Harrison Street
Fourteenth Floor
Oakland, CA 94612-3501

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

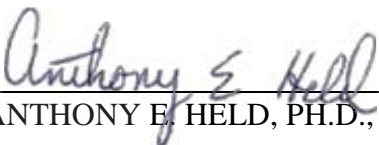
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 2/11/16

Date: _____

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

By: _____
MARC SPILO, President
Spilo Worldwide, Inc.

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11. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: Feb. 15, 2016

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

By: Marc Spilo, President
MARC SPILO, President
Spilo Worldwide, Inc.