

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 Art Supply Enterprises, Inc. (“Art Supply”), with Held and Art Supply 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. Art Supply 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Art Supply manufactures, sells, and distributes for sale in California, vinyl/PVC cutting mats (“Cutting Mats”) containing 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 Art Supply failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Cutting Mats.

1.3 Product Description

The “Products” covered by this Settlement Agreement are defined as Cutting Mats containing DEHP that are manufactured, distributed, sold, or offered for sale in California by Art Supply, including, but not limited to, the Cutting Mats offered in connection with the *Art Alternatives Self-Healing Cutting Mat Kit, AA17951, UPC #0 82435 17951 3*.

1.4 Notice of Violation

On December 13, 2017, Held served Art Supply and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Art Supply violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Cutting Mats. 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

Art Supply 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 Art Supply 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 Art Supply of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Art Supply. This Section shall not, however, diminish or otherwise affect Art Supply'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 February 19, 2018.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Art Supply agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each component when analyzed pursuant to 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, within five days of the Effective Date, Art Supply agrees to pay \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 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, and delivered to the address in Section 3.3 herein. Art Supply will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875 and (b) “Anthony Held Client Trust Account” in the amount of \$625. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment made under this Settlement Agreement.

3.2 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, Art Supply 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 § 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Art Supply agrees to pay \$17,000 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 Art Supply’s management, and negotiating a settlement in the public interest.

3.3 Payment Address

All payments under 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 Art Supply

This Settlement Agreement is a full, final and binding resolution between Held, as an individual, and *not* on behalf of the public, and Art Supply, of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past and current agents,

principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, and/or assignees and heirs, against Art Supply, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Art Supply directly or indirectly distributes, ships, or sells the Products, including its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and their owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Releasees”), based on the alleged or actual failure to warn about alleged exposures to DEHP from the Products that were manufactured, distributed, sold and/or offered for sale by Art Supply in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein, Held as an individual, and *not* on behalf of the public, on behalf of himself, his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, successors, and/or assignees, hereby waives any right that he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Held may have, 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 exposures to DEHP from Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Art Supply before the Effective Date (collectively “claims”), against Art Supply and Releasees. The releases provided by Held under this Settlement Agreement are provided solely on Held’s own behalf and not on behalf of the public in California.

4.2 Art Supply’s Release of Held

Art Supply, 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

articulated in the Notice or otherwise 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 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Art Supply 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 on any Party by the other at the following addresses:

For Art Supply:

Eric Matthews, CFO
Art Supply Enterprises, Inc.
1375 Ocean Avenue
Emeryville, CA 94608

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 Health and Safety Code § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

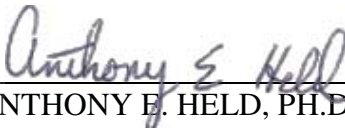
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 2/15/2018

Date: _____

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

By: _____
Eric Matthews, CFO
ART SUPPLY ENTERPRISES, INC.

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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: 2/15/16 _____

By: _____

By:  _____

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

Eric Matthews, CFO
ART SUPPLY ENTERPRISES, INC.