

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Enchante Accessories Inc. (referred to herein as “Enchante”) and Anthony E. Held, Ph.D., P.E. (referred to herein as “Held”), with Enchante and Held 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 contained in consumer products. Held alleges that Enchante 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, Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Enchante manufactures, imports, distributes, sells and/or offers for sale in California vinyl/PVC storage bins handles 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 Enchante failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from vinyl/PVC storage bin handles.

1.3 Product Description

The products that are covered by this Settlement Agreement are storage bins with vinyl/PVC handles (collectively, the “Products”) manufactured, imported or purchase for resale by Enchante that contain DEHP.

1.4 Notice of Violation

On or about December 13, 2017, Held served Enchante, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Enchante violated Proposition 65 by failing to warn its customers and consumers in California that its 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

Enchante 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, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Enchante of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Enchante. However, this Section shall not diminish or otherwise affect Enchante's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Enchante maintains that it has not knowingly manufactured or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which the parties execute this Settlement Agreement.

2. PRODUCT REFORMULATIONS AND WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, Enchante shall only distribute, ship, sell or offer for sale in California, Products that are Reformulated Products as defined by Section 2.2, below, or Products that are labeled with a clear and reasonable warning as set forth under Section 2.4, below.

2.2 Reformulation Standard

For purposes of this Settlement Agreement, "Reformulated Products" are either 1) Products with handles made of wood and containing no vinyl/PVC materials, or 2) Products with vinyl/PVC materials containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Consumer Product Safety Commission ("CPSC") methodology CPSC-CH-C1001.09.3 and Environmental Protection Agency testing methodologies 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance, or any other methodology used by federal or state agencies for the purpose of

determining phthalate content in a solid substance.

2.3 Product Warning Triggers based on DEHP Concentration Levels.

Products intended for retail sale in California that contain DEHP in or on any accessible component in excess of 0.1% (1,000 ppm) will trigger a warning as set forth in Section 2.3.

2.4 Consumer Product Exposure Warning Language.

Commencing on the Effective Date, Enchante shall ensure that any Products which are not Reformulated Products that it distributes, ships or sells to California retailers or distributors with nationwide distribution or offers or intends for sale in California include a clear and reasonable warning pursuant to this Section. The warning shall be prominently placed with such conspicuousness when 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 use. The warning shall be affixed to the packaging or labeling and contain one of the following statements:

⚠️ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

OR

⚠️ WARNING: This product can expose you to chemicals including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

After the Effective Date, but before August 30, 2018, the following warning, or one that complies with 27 CCR section 25600, et. seq. may be used:

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

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Pursuant to Health & Safety Code § 25249.7(b)

Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all claims alleged in the Notice, Enchante agrees to pay a total of \$6,500 in civil penalties. Each penalty payment will be allocated in accordance with 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 retained by Held, as set forth in Sections 3.1.1 and 3.1.2 below.

Held's counsel shall be responsible for delivering OEHHA's portion of the penalty payments made under this Settlement Agreement.

3.1.1 Initial Civil Penalty Payment. Enchante shall pay an initial civil penalty of \$1,500. Within ten (10) days of the Effective Date, Enchante shall provide its initial civil penalty payment as follows: (i) a check in the amount of \$1,125 payable to "OEHHA" and (ii) a check in the amount of \$375 payable to "Anthony Held Client Trust Account."

3.1.2 Final Civil Penalty Payment. Enchante shall pay a final civil penalty of \$5,000. However, the final civil penalty shall be waived in its entirety, if, on or before the September 15, 2018, an officer of Enchante certifies that as of August 30, 2018, all Products distributed, shipped or sold to California retailers or distributors with nationwide distribution or offered or intended for sale in California are Reformulated Products as defined by Section 2.2, and that Enchante will continue to distribute, ship or sell to California retailers or distributors with nationwide distribution and offer for sale in California only Reformulated Products in the future. The option to certify to product reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. Unless waived, on or before September 30, 2018, shall provide its final civil penalty payment as follows: (i) a check in the amount of \$3,750 payable to "OEHHA" and (ii) a check in the amount of \$1,250 payable to "Anthony Held Client Trust Account."

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 §1021.5 for all work performed in this matter. Under these legal principles, within ten (10) days of the Effective Date, Enchante agrees to pay \$23,000 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Enchante's management, and negotiating a settlement in the public interest. Enchante's payment shall be in the form of a check payable to "The Chanler Group."

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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 Enchante

This Settlement Agreement is a full, final and binding resolution between Held, as an individual, and *not* on behalf of the public, and Enchante, 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 Enchante, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Enchante directly or indirectly distributes, ships, or sells the Products, including, but not limited, 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 (collectively, the "Releasees"), for any and all claims based on the failure to warn about alleged exposures to DEHP contained in the Products before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, 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 and all rights 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 or 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 the Products

before the Effective Date (collectively “claims”), against Enchante and Releasees.

4.2 Enchante’s Release of Held

Enchante, 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Held on behalf of himself only, on one hand, and Enchante, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Paragraphs 4.1 and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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 and Enchante each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65

Compliance by Enchante with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in 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 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 DEHP or as to the Products, then Enchante may provide written notice to Held of any asserted change in the law, or its applicability to Enchante or the Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Enchante or 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:

Enchante: Ezra Erani, C.E.O.
Enchante Accessories Inc.
16 East 34th Street, 16th Floor
New York, NY 100160

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

on behalf of **Enchante:**

Carol R. Brophy, Esq.
Steptoe & Johnson LLP
One Market Street, Suite 1800
San Francisco, CA 94105

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

12. AUTHORIZATION

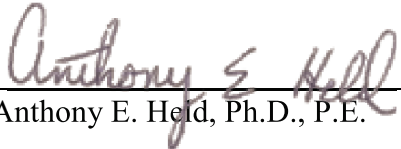
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 6/25/2018

Date: _____

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

By: _____
Ezra Erani, C.E.O.
Enchante Accessories Inc.

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12. 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: 6/25/2018 _____

By:  _____

Ezra Erani, C.E.O.
Enchante Accessories Inc.