

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Diversified Products, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., ("Held"), and Diversified Products, Inc. ("Diversified"), with Held and Diversified collectively referred to as the "parties." Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Diversified employs ten or more persons and is a person in the course of doing business for purposes of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Held alleges that Diversified has manufactured, imported, distributed and/or sold in the State of California, eyewear cases containing the phthalate chemical di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as eyewear cases containing DEHP manufactured, imported, distributed and/or sold by, or on behalf of, Diversified including, but not limited to, *Designer Eyewear Case by Select-A-Vision, C508 (#0 37741 00508 7)*. All such items shall be referred to herein as the "Product" or the "Products."

1.4 Notices of Violation

On June 3, 2010, Held served Diversified and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided the recipients with notice that Diversified was in violation of California Health & Safety Code § 25249.6 based on

Diversified's failure to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the June 3, 2010, Notice.

1.5 No Admission

Diversified denies the material, factual and legal allegations contained in Held's Notice and maintains that all 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 Diversified of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Diversified of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Diversified under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 9, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date, Diversified shall not ship, sell or offer to be shipped for sale in California any Product unless it is "DEHP Free". For purposes of this Settlement Agreement, DEHP Free shall mean Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Diversified shall pay \$1,000 in civil penalties. This civil penalty reflects a credit of \$8,000 based on Diversified's commitment to reformulate the Products so that they are "DEHP Free" as per Section 2 above.

The civil penalty shall be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Held. Diversified shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment" in the amount of \$750 representing 75% of the total penalty and (b) one check to "The Chanler Group in Trust for Held" in the amount of \$250 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Held, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before February 24, 2011, to the following address:

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

4. **REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Diversified then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Diversified shall pay the total amount of \$17,000 for fees and costs incurred as a result of investigating, bringing this matter to

Diversified's attention, and negotiating a settlement in the public interest. Diversified shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before February 24, 2011, to the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Held's Release of Diversified

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims 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 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), that were brought or could have been brought against Diversified, or its parents, subsidiaries or affiliates, and all of their downstream customers, distributors, wholesalers, retailers, licensors, licensees, or any other downstream person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees") in this matter. This release is limited to, but is intended to be a full, final, and binding resolution of, those Claims that arise under Proposition 65, as against Diversified and the Releasees, as such Claims relate to Diversified's alleged failure to warn about exposures to

DEHP contained in the Products. Diversified's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for Diversified and the Releasees with respect to DEHP in Products after the Effective Date.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products for Diversified or any component parts thereof or to any distributors or suppliers who sold the Products or any component parts thereof to Diversified.

5.2 Diversified's Release of Held

Diversified waives any and all claims against Held, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

5.3 Post Execution Activities

The parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Diversified or the Releasees under Proposition 65 as covered under this release. If requested in writing by Diversified (within twelve months of the Effective Date), Diversified may ask Held to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with Diversified and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Diversified will reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$16,000. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by

Diversified to have Held file a complaint and seek a consent judgment. Diversified will remit payment to The Chanler Group, at the address set forth in Section 4 above. Such additional fees shall be paid by Diversified within ten days after its receipt of monthly invoices from Held for work performed under this paragraph. In the event a third party were to appeal the entry of a Consent Judgment sought pursuant to this Section 5.3, Held and his counsel shall be entitled to seek their fees and costs associated with all such appealed work pursuant to CCP § 1021.5.

6. 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.

7. 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 Diversified shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve Diversified from any obligation to comply with any pertinent state or federal toxics control law.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Diversified:

Bruce Nye, Esq.
adams | nye | becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

For Held:

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Held agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

APPROVED

By Anthony Held at 3:23 pm, Feb 23, 2011

Date: _____

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

AGREED TO:

Date: 2/16/2011

By: *Steve [Signature]*
Diversified Products, Inc.