

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 Thro, Ltd. (“Thro”), with Held and Thro each individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in 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. Thro 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 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Held alleges that Thro manufactures, imports, sells, or distributes for sale in the state of California, pillows with vinyl/PVC coverings or other components containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are pillows with vinyl/PVC coverings containing DEHP manufactured, sold, or distributed for sale in California by Thro, including, but not limited to, the *Thro by Marlo Lorenz Pillow 18”x18”, 4211 Brown (UPC# 8 07882 10930 8)* (collectively, “Products”).

1.4 Notice of Violation. On August 30, 2013, Held served Thro and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Thro violated Proposition 65 when it failed to warn its customers and consumers in California that the 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. Thro denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, 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 Thro of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Thro of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Thro. This Section shall not, however, diminish or otherwise affect Thro'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 date on which it is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products. Commencing on the Effective Date and continuing thereafter, any Products that Thro manufactures, distributes, sells or ships, for sale in California, shall be Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million ("ppm") (0.1%) in vinyl or PVC Accessible Components when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP content in a solid substance. For purposes of this Settlement Agreement, an Accessible Component refers to a component of a Product that could be touched by a person during normal and reasonably foreseeable use.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Thro shall pay \$2,000 in civil penalties. The penalty amount reflects a penalty credit agreed of \$6,000 agreed to by Held after receiving written certification from Thro representing that all of Thro's Products sold or distributed for sale in California on and after the Effective Date will constitute Reformulated Products as defined by this Settlement Agreement.

Thro's penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of

Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Held. Within five business days of the Effective Date, Thro shall provide Held’s counsel with two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$500.

3.2 Attorney 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, Thro shall pay \$20,000 for all fees and costs incurred investigating, bringing this matter to the attention of Thro’s management, and negotiating a settlement in the public interest. Payment shall be delivered within five business days of the Effective Date to the address provided in Section 3.3.1.

3.3 Payment Procedures

3.3.1 Payment Address for Held and The Chanler Group. All payments to Held and The Chanler Group under this Settlement Agreement shall be delivered to the following address:

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

3.3.2 Payment Addresses for OEHHA. All payments to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) to one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Thro agrees provide Held's counsel with a copy of the checks to OEHHA enclosed with its settlement payments to Held, and delivered to address provided in Section 3.3.1.

3.3.4 Tax Documentation. Thro agrees to provide a completed IRS 1099 form for its payments to each of the following payees under this Settlement Agreement:

- (a) "Anthony E. Held" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) "The Chanler Group" (EIN: 94-3171522) at the address provided in section 3.3.1; and
- (c) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486), 1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Thro. This Settlement Agreement is a full, final, and binding resolution between Held and Thro of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Thro, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Thro directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers (including but not limited to Tuesday Morning Corp.), franchisees, cooperative members, and licensees (collectively the "Releasees"), based on the failure to warn about alleged exposures to DEHP from Products manufactured, sold or distributed for sale in California by Thro prior to the Effective Date. Furthermore, the Parties agree that compliance by Thro with the

terms of this settlement agreement shall constitute compliance with Proposition 65 with respect to DEHP in the Products.

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/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Thro and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees (collectively, "Claims") arising under Proposition 65 based on the failure to warn about alleged exposures to DEHP from Products manufactured, sold or distributed for sale in California by Thro prior to the Effective Date.

Held also, on behalf of himself and his past and current agents, representatives, attorneys, successors, and assignees, provides a general release to Thro which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of any alleged exposures, or failure to warn of exposures, to DEHP in the Products manufactured, sold, or distributed for sale in California by Thro 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.

4.2 Thro's Release of Held. Thro, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and 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, otherwise

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

Thro, also on its own behalf and on behalf of its directors, officers, employees, and its past and current, representatives, attorneys, successors, and assignees, hereby provides a general release to Held and his counsel which shall be effective as a full and final accord and satisfaction, as a bar to all claims of Thro of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of Held's investigation of the Products, or the allegations that are the subject of the Notice, or relating to the Products. Thro 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.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Thro may request in writing that Held draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Held and Thro agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Thro agrees to reimburse Held and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving an invoice from Held's counsel for work performed under this section, Thro will remit payment to the address provided in section 3.3.1.

6. 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.

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 Thro may provide written notice to Held of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICE

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

For Thro, Ltd.:

Marlo Lorenz, Chief Executive Officer
Thro, Ltd.
181 Freeman Avenue, Unit 4
Islip, NY 11751

With a copy to:

Frank J. Martinez, Esq.
The Martinez Group PLLC
55 Washington Street, Suite 323
Brooklyn, NY 11201

For Held:

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

Any Party may, from time to time, 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 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.

10. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. MODIFICATION

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

12. AUTHORIZATION

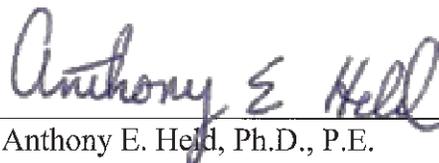
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: December 23, 2013

Date: 12/23/13

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

By: 
Malte Lorenz, Chief Financial Officer
Thro, Ltd.