

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Tri-Coastal Design Group Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Tri-Coastal Design Group, Inc. (“Tri-Coastal”), with Held and Tri-Coastal collectively referred to 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. Tri-Coastal 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 & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Tri-Coastal has manufactured, imported, distributed and/or sold in the State of California vinyl/PVC journal covers containing Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as the *Journal, Hearts, Style #5480-60025*, which is manufactured, imported, distributed, sold and/or offered for sale by Tri-Coastal in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On June 20, 2014, Held served Tri-Coastal and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Tri-Coastal was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that the Product exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Tri-Coastal 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 Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Tri-Coastal of any fact, conclusion, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tri-Coastal of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Tri-Coastal. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 15, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

A Reformulated Product is defined as a Product 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 the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Tri-Coastal shall not manufacture, import, distribute, sell or offer the Product for sale in the State of California unless it is a Reformulated Product pursuant to Section 2.1 above, or shall carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

Commencing on or before the Effective Date, Tri-Coastal shall provide clear and reasonable warnings for the Product as set forth in subsections 2.3(a) and (b) for the Product if that do not qualify as Reformulated Products. 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Tri-Coastal shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Tri-Coastal may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Such instruction sent to Tri-Coastal's customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

WARNING: The following products contain DEHP, a phthalate Chemical, known to the State of California to cause birth defects and other reproductive harm:
[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that Tri-Coastal sells the Product via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that is not a Reformulated Product, Tri-Coastal shall provide warnings for such Product sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Tri-Coastal may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product:

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Tri-Coastal must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Product via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

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

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

Subject to Section 3.2 below, in settlement of all the claims referred to in this Settlement Agreement, Tri-Coastal shall pay a total of \$9,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Held, as follows:

3.1 Initial Civil Penalty

Tri-Coastal shall pay an initial civil penalty in the amount of \$3,000 on or before the Effective Date. Tri-Coastal shall issue a check to: “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$3,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Tri-Coastal shall pay a final civil penalty of \$6,000 on or before September 30, 2015. The final civil penalty shall be waived in its entirety, however, if, no later than September 15, 2015, an officer of Tri-Coastal provides Held with written certification that, as of the date of such certification and continuing into the future, Tri-Coastal has met the reformulation standard specified in Section 2.1 above, such that the Product manufactured, imported, distributed, sold and offered for sale in California by Tri-Coastal is a Reformulated Product. Held must receive any such certification on or before September 15, 2015. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Tri-Coastal shall issue a check for its final civil penalty payments to: "Anthony E. Held, Ph.D., P.E., Client Trust Account" in the amount of \$6,000 which shall be paid in accordance with Section 3.3 below.

3.3 Payment Procedures

3.3.1. Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Held, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment 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 an agreement 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. Held 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 § 1021.5, for all work performed through

the mutual execution of this agreement. Tri-Coastal shall pay \$17,000 for fees and costs incurred as a result of investigating, bringing this matter to Tri-Coastal's attention, and negotiating a settlement in the public interest. Tri-Coastal shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1 above.

5. RELEASES

5.1 Held's Release of Tri-Coastal

This Settlement Agreement is a full, final and binding resolution between Held and Tri-Coastal of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, against Tri-Coastal, its parents, subsidiaries, affiliated entities under common ownership, divisions, directors, officers, employees, attorneys and each entity to whom Tri-Coastal directly or indirectly distributes or sells the Product and their present and former agents, attorneys, representatives, directors, officers, and employees, and their respective predecessors, successors, parent, affiliates, subsidiaries, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Product that was manufactured, imported, distributed, sold and/or offered for sale by Tri-Coastal in California before the Effective Date. This release is provided in Held's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, Held on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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 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 -- limited to and arising under Proposition 65 with respect to DEHP in the

Product manufactured, imported, distributed, sold and/or offered for sale by Tri-Coastal before the Effective Date (collectively “claims”), against Tri-Coastal and Releasees.

5.2 Tri-Coastal’s Release of Held

Tri-Coastal, on behalf of itself, 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 (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.

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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Tri-Coastal 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 Tri-Coastal 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 Tri-Coastal:

Michael Mastrangelo, President
Tri-Coastal Designs Group Inc.
40 Harry Shupe Boulevard
Wharton, NJ 07885

With a copy to:

Tedd S. Levine
The Law Offices of Tedd S. Levine, LLC
1305 Franklin Avenue, Suite 300
Garden City, New York 11530

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 AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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. 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

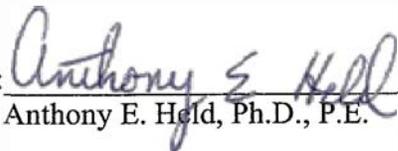
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: April 16, 2015

Date: 4/15/2015

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

By: 
Michael Mastrangelo, President,
Tri-Coastal Design Group Inc.