

## 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 GB Tools & Supplies, LLC (“GBT”), with Held and GBT 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. GBT 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 GBT manufactured, imported, sold, or distributed for sale in the State of California, tools with vinyl/PVC grips 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 cause birth defects or other reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement, and to which this agreement is specifically limited, are wiring tools with vinyl/PVC grips containing DEHP that are identified and known as the *Calterm Industrial Wiring Multi-Tool* (collectively “Products”).

**1.4 Notice of Violation.** On July 24, 2013, Held served GBT and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that GBT 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.** GBT 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 GBT 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 GBT of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by GBT. This Section shall not, however, diminish or otherwise affect GBT's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" means March 11, 2014.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulated Products.** GBT represents that it, upon receiving the Notice, applied Proposition 65-compliant warnings to its remaining inventory of Products and provided the same for any customers with inventory of Products, and that it has currently ceased offering the Products in California. However, it further represents and commits that, before offering the Products for sale or use in California in the future, it will only import for sale or purchase for sale in California Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) when sampled analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DEHP content in a solid substance.

## **3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payments.** Pursuant to Health and Safety Code section 25249.7(b), GBT shall pay \$12,000 in civil penalties. Each 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.

**3.1.1 Initial Civil Penalty.** Within five (5) business days of the Effective Date, GBT shall make an initial civil penalty payment of \$4,000. GBT shall provide its payment in

two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$1,000.

**3.1.2 Final Civil Penalty.** On or before May 15, 2014, GBT will make a final civil penalty payment of \$8,000. Pursuant to California Code of Regulations title 11 section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than May 1, 2014, an officer of GBT certifies in writing to Held's counsel that, as of the date of its certification, one-hundred percent (100%) of the Products GBT sells and/or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that GBT will continue to only offer Reformulated Products in California in the future. Alternatively, if GBT has not recommenced sales of the Products in California, it may certify that it continues not to offer the Products for sale of use in California, but that it will only offer Reformulated Products should such sales recommence. The option to certify timely reformulation or continued withdraw of the Products from market in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence.

**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, GBT shall reimburse Held and his counsel \$25,000.00 for the fees and costs incurred investigating, bringing this matter to the attention of GBT's management, and negotiating a settlement in the public interest.

**3.3 Payment Procedures.** With the exception of the final civil penalty payment or certification in lieu of payment due on May 15, 2014, all payments owed under this Settlement Agreement are due within five (5) business days of the Effective Date. Payments are to be delivered according to the following subsections.

**3.3.1 Payment Address for Held.** All payments to Held and his counsel under this Settlement Agreement are to 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 will be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) at 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 Non-U.S. Postal Delivery or Courier:

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.** GBT agrees to provide Held’s counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Held, to be delivered to the address provided in Section 3.3.1.

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

- (a) “Anthony 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 GBT.** This Settlement Agreement is a full, final, and binding resolution between Held and GBT 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 GBT, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom GBT directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to DEHP from Products manufactured, sold or distributed for sale in California by GBT prior to the Effective Date.

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 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 GBT 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 arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold, or distributed for sale in California by GBT prior to the Effective Date.

**4.2 GBT's Release of Held.** GBT, 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.

5. **POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, GBT 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 GBT 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, GBT 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 for work performed under this section, GBT 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 GBT 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: (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 GB Tools & Supplies, LLC:

Dawn M. Boland, Esq.  
GB Tools & Supplies, LLC  
N86 W12500 Westbrook Crossing  
Menomonee Falls, WI 53051

With a copy to:

Jennifer T. Taggart, Esq.  
Demetriou, Del Guericco, Springer & Francis, LLP  
700 South Flower Street, Suite 2325  
Los Angeles, CA 90017

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

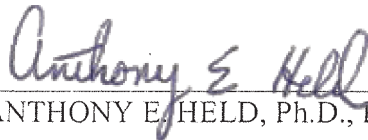
This Settlement Agreement may be modified only by written agreement of the Parties.

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.

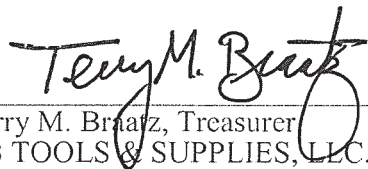
**AGREED TO:**

Date: March 10, 2014

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

**AGREED TO:**

Date: May 10, 2014

By:   
Terry M. Bratz, Treasurer  
GB TOOLS & SUPPLIES, LLC.