

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 MTD Products Company (“MTD”), with Held and MTD 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 used in consumer products. For purposes of this settlement only, MTD does not dispute the allegation that it 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that MTD manufactures, sells, and distributes for sale in California, tools with vinyl/PVC grips that contain the phthalate chemical 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 MTD failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products that are covered by this Settlement Agreement are tools with vinyl/PVC grips containing DEHP including, but not limited to, the *Arnold Blade Removal Tool*, #490-850-0005, #645-78951A (#0 37049 94510 8) that are/were manufactured, sold and/or distributed for sale in California by MTD (collectively, “Products”).

1.4 Notice of Violation

On or about July 24, 2013, Held served MTD (erroneously identified as MTD Holdings, Inc.) and the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") alleging that MTD 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

MTD denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has 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 MTD of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by MTD of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by MTD. However, this Section shall not diminish or otherwise affect MTD'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 May 15, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS

2.1 Reformulation Commitment

Commencing on June 1, 2014, and continuing thereafter, MTD agrees that it will only manufacture for sale or purchase for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 1,000 parts per million ("ppm") (0.1%) DEHP content in any Accessible Component (i.e., any feature, part or portion of a Product that can be touched

during reasonably foreseeable use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining 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)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, MTD agrees to pay \$6,000.00 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 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 paid to Held.

3.1.1 Initial Civil Penalty. Within 15 business days of the Effective Date, MTD shall pay an initial civil penalty of \$2,000.00. MTD will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500.00; and (b) "The Chanler Group in Trust for Anthony Held" in the amount of \$500.00.

3.1.2 Final Civil Penalty. On July 1, 2014, MTD shall pay a final civil penalty of \$4,000.00. The final civil penalty shall be waived in its entirety if, no later than June 15, 2014, an officer of MTD provides Held's counsel with written certification that, as of the date of such certification, all Products sold or distributed for sale in California are Reformulated Products as defined by Section 2.1 of this Settlement Agreement, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification in lieu of making the final civil penalty payment under this Settlement Agreement is a material term, and time is of the essence.

3.2 Reimbursement of Held's Attorneys' Fees and Costs

Under general contract principles, and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5, the Parties reached an accord on the

compensation due to Held and his counsel for all work performed in this matter. Under these legal principles, MTD agrees to pay \$18,000.00 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of MTD's management, and negotiating a settlement in the public interest.

3.3 Payment Procedures

3.3.1 Payment Addresses. Payments shall be delivered as follows:

(a) All payments and tax documentation required for Held and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses as appropriate:

For United States Postal Service 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 Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.3.2 Proof of Payment to OEHHA. MTD agrees to provide Held with a copy of each penalty check sent to OEHHA, enclosed with MTD's penalty payment(s) to Held, and delivered to the address provided in Section 3.3.1(a).

3.3.3 Issuance of 1099 Forms. MTD also agrees to issue a separate federal IRS 1099 form for its payments to each of the following payees: (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); and (c) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486).

5. CLAIMS COVERED AND RELEASED

5.1 Held's Release of MTD

This Settlement Agreement is a full, final and binding resolution between Held and MTD, of any violation of Proposition 65 that was or could have been asserted by Held on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against MTD, its parents, subsidiaries, affiliated entities, entities under common ownership (including but not limited to MTD Products, Inc. and MTD Holdings, Inc.), its directors, officers, employees, attorneys, and each entity to whom MTD directly or indirectly distributes or sells Products, including but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on an alleged failure to warn about exposures to DEHP from the Products manufactured, distributed, sold or offered for sale in California by MTD before 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/or assignees, hereby waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses of any nature, including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 and alleging unwarned exposures to DEHP from Products manufactured, distributed, sold or offered for sale by MTD before the

Effective Date. MTD's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for MTD and the Releasees with respect to the Products.

Held also, on behalf of himself and his agents, attorneys, representatives, successors and assigns, in his respective individual capacity only and not in his representative capacity, provides a general release of MTD and the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products as set forth in the Notice. 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.

5.2 MTD's Release of Held

MTD 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 (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. POST-EXECUTION ACTIVITIES

Within twelve months of the execution of this Settlement Agreement MTD may send Held a written request asking that he file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and seek court approval of the

same pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Held and MTD agree to reasonably cooperate, and to use their best efforts and those of their counsel, to support the entry of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, MTD agrees to reimburse Held and his counsel for the reasonable fees and costs incurred performing work under this Section not to exceed \$7,500.00 exclusive of fees and cost on appeal, if any. MTD further agrees to remit payment to the address set forth in Section 3.3.1(a) within ten days of receiving an invoice from Held's counsel.

7. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the terms of this Settlement Agreement are held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. **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 MTD may 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.

9. **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 MTD:

General Counsel
MTD Products Company
5903 Grafton Road
Valley City, OH 44280

For Held:

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

with copy to:

Merton A. Howard, Esq.
Hanson Bridgett LLP
425 Market St., 26th Floor
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.

10. 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.

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

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

12. MODIFICATION

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

13. 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: May 21, 2014

By: *Anthony E. Held*
Anthony E. Held

AGREED TO:

Date: 5-21-14

By: *[Signature]*
James M. Milinski,
Senior Vice President of Finance and
Treasurer
MND Products Company