

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, PhD., P.E. (“Held”) and Crabtree & Evelyn, Ltd. (“Crabtree & Evelyn”), with Held and Crabtree & Evelyn 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. Crabtree & Evelyn 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 Crabtree & Evelyn manufactures, imports, sells, or distributes for sale in the state of California, toiletry bags with vinyl/PVC components that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are toiletry bags with vinyl/PVC components containing DEHP that were manufactured, sold, or distributed for sale in California by Crabtree & Evelyn, specifically, the *Crabtree & Evelyn Gardeners Shed Bag, No. 44663, UPC #0 44936 23874 8*. The toiletry bags with vinyl/PVC components containing the DEHP shall, where appropriate, be referred to as the “Products.”

### 1.4 Notice of Violation

On or about September 26, 2013, Held served Crabtree & Evelyn and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Crabtree & Evelyn violated Proposition 65 by failing 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**

Crabtree & Evelyn 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 Crabtree & Evelyn 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 Crabtree & Evelyn of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Crabtree & Evelyn. This Section shall not, however, diminish or otherwise affect Crabtree & Evelyn'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 March 31, 2014.

## **2. INJUNCTIVE RELIEF**

### **2.1 Commitment to Reformulate Products**

Commencing on the Effective Date, and continuing thereafter, Crabtree & Evelyn commits that the Products it manufactures, imports, distributes, ships, sells or offers to ship for sale in California, will be "Reformulated Products."

### **2.2 Reformulated Products**

Commencing on the Effective Date and continuing thereafter, Crabtree & Evelyn shall only manufacture for sale or purchase for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products that contain a maximum of 1,000 parts per million DEHP content when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. Crabtree & Evelyn

may utilize any other testing methodology allowed by state or federal agencies for the purpose of determining DEHP content in a solid substance to determine compliance with this Section.

### **3. MONETARY PAYMENTS**

#### **3.1 Payments Pursuant to Health & Safety Code Section 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Crabtree & Evelyn shall pay a total of \$3,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

##### **3.1.1 Initial Civil Penalty**

Crabtree & Evelyn shall pay an initial civil penalty in the amount of \$3,000.00 on or before the Effective Date. Crabtree & Evelyn shall issue two separate checks to: (a) “OEHHA” in the amount of \$2,250.00; and (b) “The Chanler Group in Trust for “Anthony E. Held” in the amount of \$750.00. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

##### **3.1.2 Final Civil Penalty**

Crabtree & Evelyn has submitted a declaration certifying that it last sold the Product on July 26, 2013, has ordered the destruction of all Products remaining in inventory, and will not sell the Product in the future. As such, the final civil penalty of \$7,000.00 is waived.

#### **3.2 Attorney 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. Crabtree & Evelyn 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 section 1021.5, for all work performed through the mutual execution of this agreement. Crabtree & Evelyn shall pay \$25,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Crabtree & Evelyn's attention, and negotiating a settlement in the public interest. Crabtree & Evelyn 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 the Effective Date, to the address listed in Section 3.3.1(a) 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 3.1.1 through 3.1.2, 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

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1.1 through 3.1.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

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

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Crabtree & Evelyn shall issue separate 1099 forms for each payment to Held, whose address and tax identification

number will be provided upon request after this Settlement Agreement is fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Held's Release of Crabtree & Evelyn**

This Settlement Agreement is a full, final, and binding resolution between Held and Crabtree & Evelyn 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 Crabtree & Evelyn, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Crabtree & Evelyn 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 contained in Products sold or distributed for sale by Crabtree & Evelyn in California 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/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 Crabtree & Evelyn 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 in Products manufactured, sold, or distributed for sale in California by Crabtree & Evelyn prior to the Effective Date.

##### **4.2 Crabtree & Evelyn's Release of Held**

Crabtree & Evelyn, 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 by Held and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. 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.

**6. 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 Crabtree & Evelyn 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.

**7. NOTICES**

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 party at the following addresses:

For Crabtree & Evelyn:

Colleen Creevy Cording, Esq.  
Crabtree & Evelyn, Ltd.  
102 Peake Brook Road  
Woodstock, CT 06281

With a copy to:

Jonathan M. Lee, Esq.  
Sedgwick LLP  
333 Bush Street, 30th Floor  
San Francisco, CA 94104-2834

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.

**8. 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.

**9. POST-EXECUTION ACTIVITIES**

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

**10. MODIFICATION**

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

**11. 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: 3/19/2014

Date: 3/19/14

By: Anthony E. Held  
Anthony E. Held, PhD., P.E.

By: Colleen Creevy Cording 7  
Crabtree & Evelyn, Ltd.  
Colleen Creevy Cording, General Counsel