

## 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 Big Time Products, LLC (“Big Time”), with Held and Big Time 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. Held alleges that Big Time 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 Big Time manufactures, sells, and/or distributes for sale in California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Held alleges that Big Time failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its vinyl/PVC gloves.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC gloves containing DINP including, but not limited to, the *Grease Monkey PRO Cleaning Disposable Vinyl Gloves, #24525, UPC #7 31919 24525 0*, manufactured, sold or distributed for sale in California by Big Time (“Products”).

#### 1.4 Notice of Violation

On or about May 21, 2015, Held served Big Time and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Big Time violated Proposition 65 when it failed to warn its customers and consumers in

California that its Products expose users to DINP. 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**

Big Time denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Big Time 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 Big Time of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Big Time. However, this Section shall not diminish or otherwise affect Big Time'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 June 3, 2016.

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

### **2.1 Reformulated Products**

On or before the Effective Date, and continuing thereafter, Big Time shall manufacture for sale or purchase for sale in or into California, "Reformulated Products" or shall comply with the warning requirements of Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DINP 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 other methodology utilized by federal or state government agencies for the purpose of determining DINP content in a solid substance.

## **2.2 Clear and Reasonable Warnings**

As of the Effective Date, Big Time shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in this Section. However, Big Time represents that it has implemented a warning program, in advance of executing this Settlement Agreement. As such, any Product that is or was ordered for distribution or sale in California prior to the Effective Date, may contain the warning currently provided by Big Time.

**(a) Product Warning:** Commencing on the Effective Date, for all Products that are not Reformulated Products, Big Time agrees that it will only offer such Products for sale in California with a clear and reasonable Proposition 65 warning. A clear and reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to the Product as follows:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Or, in the event that Big Time has evidence that the Products contain more than one Proposition 65-listed chemical:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

**(b) Mail Order Catalog Warning.** Any warning provided in any Big Time mail order catalog available on Big Time's website shall be in the same type size or larger than the Product description text within the catalog. The warning shall contain language consistent with the following statement(s) and be provided on the same page and in the same general location as the display and/or description of the Product:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Or, in the event that Big Time has evidence that the Products contain more than one Proposition 65-listed chemical:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

Where Big Time determines it is impracticable to provide the warning on the same page and in the same general location as the display and/or description of the Product, Big Time may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with language consistent with the following statement 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 DINP, a phthalate known to the State of California to cause cancer and birth defects and other reproductive harm.

Or, in the event that Big Time has evidence that the Products contain more than one Proposition 65-listed chemical:

WARNING: Certain products identified with this symbol  and offered for sale in this catalog contain chemicals known to the State of California to cause cancer and 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, Big Time must provide a header or footer directing the consumer to the warning language and definition of the designated symbol. Big Time’s obligations relating to this paragraph 2.2(b) shall go into effect when Big Time reprints the catalogue at issue.

**(c) Internet Website Warning.** As of the Effective Date, a warning shall be given in conjunction with internet sales of the Product by Big Time, 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 warning shall contain language consistent with the following statement(s) 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 DINP, a phthalate chemical known to the State of California to cause cancer.

Or, in the event that Big Time has evidence that the Products contain more than one Proposition 65-listed chemical:

WARNING: This product contains chemicals known to the State of California to cause cancer and 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 language consistent with the following statement also appears elsewhere on the same web page:

WARNING: This product contains DINP, a phthalate chemical known to the State of California to cause cancer.

Or, in the event that Big Time has evidence that the Products contain more than one Proposition 65-listed chemical:

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects and other reproductive harm.

### **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, Big Time has been assessed \$7,000 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”) by Held. Held’s counsel shall be responsible for remitting Big Time’s penalty payment(s) under this Settlement Agreement to OEHHA.

**3.1.1 Initial Civil Penalty.** On or before the Effective Date, Big Time shall pay an initial civil penalty in the amount of \$3,500. Big Time will provide its payment in a single check in the amount of \$3,500 made payable to “Anthony E. Held, Client Trust Account” to be delivered to the address provided in Section 3.3, below.

**3.1.2 Final Civil Penalty.** On or before December 31, 2016, Big Time shall pay a final civil penalty of \$3,500 in accordance with the formula set forth in Paragraph 3.1 above. The final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2016, an officer of Big Time provides Held’s counsel with written certification that, as of the date of the certification, all Products shipped or distributed for sale in California or sold in California are Reformulated Products as defined in Section 2.1 above, and that Big Time will continue to provide and sell only Reformulated Products in the future. The option to send a written certification in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. Big Time shall deliver its certificate, if any, to Held’s counsel at the address provided in Section 3.3, below. In the event that Big Time does not timely certify its compliance or make the final civil penalty payment required by this Section, Held may seek relief under any available legal remedy. If successful, the Parties further

agree that Held shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

### **3.2 Attorneys' 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, Big Time agrees to pay \$22,500 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Big Time's management, and negotiating a settlement. Big Time's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by 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

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

### **4.1 Held's Release of Big Time**

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public, and Big Time, 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/or assignees ("Releasers"), and Releasers hereby release any such claims, against Big Time, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Big Time directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers,

customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the failure to warn about alleged exposures to DINP contained in Products manufactured, distributed, sold or offered for sale by Big Time in California 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 but *not* on behalf of the public, hereby covenants not to sue and 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 including, but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to Products manufactured, distributed, sold and/or offered for sale by Big Time before the Effective Date.

#### **4.2 Big Time’s Release of Held**

Big Time, 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.

#### **5. 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.

**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 otherwise rendered inapplicable by reason of law generally, as to Big Time specifically as a result of a statutory exemption, or as to the Products, then Big Time may provide written notice to Held of any asserted change in the law, or its applicability to Big Time or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Big Time or the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice 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 Big Time:

Richard Chambers, President  
Big Time Products, LLC  
2 Wilbanks Road SE  
Rome, GA 30161

For Held:

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

with a copy to Big Time's counsel:

Shelley Hurwitz  
Holland & Knight  
400 South Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071

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.

**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. **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).

10. **MODIFICATION**

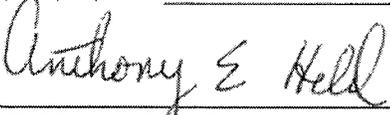
This Settlement Agreement may be modified only by written agreement of the Parties.

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:**

Date: 05/26/2016 \_\_\_\_\_

By:  \_\_\_\_\_  
ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Richard Chambers, President  
BIG TIME PRODUCTS, LLC

**9. 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).

**10. MODIFICATION**

This Settlement Agreement may be modified only by 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.

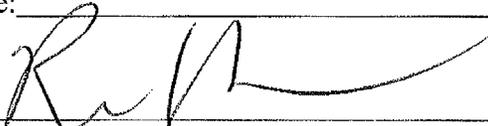
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Richard Chambers, President  
BIG TIME PRODUCTS, LLC