

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

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC Tool Grips containing DINP limited to the *Eklind Tool Hex Key Wrench, #51612, UPC #037516 51612 1*, manufactured, sold or distributed for sale in California by Eklind (“Products”).

1.4 Notice of Violation

On or about August 10, 2015, Held served Eklind, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Eklind 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

Eklind 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 Eklind 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 Eklind of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Eklind. However, this Section shall not diminish or otherwise affect Eklind'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 the date the Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Eklind agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products". 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.

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, Eklind agrees to pay \$3,000 in civil penalties, which reflects a credit of \$5,000 for Eklind's commitment to reformulate its products pursuant to Section 2.1. The 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.

Within 10 days of the Effective Date, Eklind shall pay the civil penalty in the amount of \$3,000. Eklind will provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Anthony E. Held, Ph.D., P.E., Client Trust Account" in the amount of \$750.

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, Eklind agrees to pay \$24,500 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Eklind's management, and negotiating a settlement in the public interest. Eklind's payment shall be due within 10 days of 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 Eklind

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and not on behalf of the public, and Eklind, 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 Eklind, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Eklind 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 Eklind in California before the Effective Date, as alleged in the notice of violation.

In further consideration of the promises and agreements herein contained, Held, as an individual and not on behalf of the public, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Held's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Held 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 exclusively, investigation

fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DINP in the Products, as alleged in the notice of violation, manufactured, distributed, sold and/or offered for sale by Eklind, before the Effective Date (collectively "claims"), against Eklind and Releasees.

The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and are not releases on behalf of the public.

4.2 Eklind's Release of Held

Eklind, 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 Eklind specifically as a result of a statutory exemption, or as to the Products, then Eklind may provide written notice to Held of any asserted change in the law, or its applicability to Eklind or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Eklind 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:

Eklind:

Earl Cunningham, President
Eklind Tool, Co.
11040 King Street
Franklin Park, IL 60131

Held:

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

Carol Brophy, Esq.
Sedgwick LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104

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: APPROVED
By Anthony Held at 12:43 pm Apr 22, 2016

AGREED TO:

Date: 7/26/2016

By: Anthony E Held
ANTHONY E. HELD, PH.D., P.E.

By: Earl Cunningham
Earl Cunningham, President
EKLIND TOOL, CO.