

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (“Dr. Held”) and The NOCO Company (“NOCO”) with Dr. Held and NOCO each individually referred to as a “Party” and collectively as the “Parties.” Dr. 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. NOCO 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

Dr. Held alleges that NOCO manufactures, sells, and/or distributes for sale without a Proposition 65 warning in California, wires containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and/or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are any products in the following categories that contain lead and are manufactured, sold, and/or distributed for sale in California by NOCO: (i) wires containing lead including, but not limited to, NOCO Battery Isolator Installation Kit (Wire), Part No. IGK1550, UPC #0 46221 48915 6 (“Noticed Products”); and (ii), converters, batteries, battery packs and accessories for such devices, including, but not limited to, cables (“Additional Products”). Noticed Products and Additional Products shall hereinafter be referred to as the “Products.”

1.4 Notice of Violation

On January 27, 2017, Dr. Held served NOCO and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that NOCO violated Proposition 65 when it failed to warn its customers and consumers in California that the Noticed Products expose users to lead. 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

NOCO denies the material, factual, and legal allegations contained in the Notice and NOCO 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 NOCO 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 NOCO of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NOCO. This Section shall not, however, diminish or otherwise affect NOCO’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 July 20, 2017.

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Reformulation

As of the Effective Date, NOCO shall: (i) sell, or purchase for sale, or distribute for sale in California, “Reformulated Products” pursuant to this Section 2.1; or (ii) sell, or purchase for sale, or distribute for sale in California Products that carry the Proposition 65 warnings specified in Section 2.2 below. “Reformulated Products” are Products containing a maximum of 100 parts per million of lead by weight in any accessible

component (i.e., any component that can be touched or handled during reasonably a foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yield a result of less than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol.

2.2 Product Warnings


NOCO represents that it has implemented a Proposition 65 warning program such that all Products currently contain Proposition 65-complaint health-hazard warnings. Therefore, all Products that currently contain such warnings may continue to use said warning. However, for all Products that do not currently contain a Proposition 65-compliant warning, NOCO shall provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) for all Products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies.

(a) Retail Store Sales.

(i) **Product Labeling.** NOCO shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or:


 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

(b) **Mail Order Catalog and Internet Sales.** In the event that NOCO sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, NOCO shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the specific Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.


Or, if and only if the following warning is used on the Product:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, NOCO may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** Certain products identified with this symbol can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or, if and only if the following warning is used on the Products:


 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

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, NOCO must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, 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 following warning statement shall be used 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 lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or, if and only if the following warning is used on the Products:


 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

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 the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Or:

 **WARNING:** This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or, if and only if the following warning is used on the Products:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

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, NOCO agrees to pay \$2,000 within five (5) business days of the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the amount paid to Dr. Held, and delivered to the address in Section 3.3 herein. NOCO will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,500 and (b) “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$500. Dr. Held’s counsel will deliver OEHHA’s portion of the civil penalty paid under this Settlement Agreement.

3.2 Reimbursement of Dr. Held’s Attorneys’ Fees and Costs

After reaching agreement on the civil penalty payment, the Parties reached an accord on the compensation due to Dr. 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, within five (5) business days of the Effective Date, NOCO agrees to pay \$19,500 in the form of a check made payable to “The Chanler Group” in full and complete payment for all fees and costs incurred investigating, bringing this matter to the attention of NOCO’s management, and negotiating a settlement.

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 Dr. Held’s Release of NOCO

This Settlement Agreement is a full, final and binding resolution between Dr. Held and NOCO, of any violation of Proposition 65 that was or could have been asserted by Dr. Held on his own behalf, or on behalf of himself, his past and current agents, representatives, attorneys, successors, and assignees, against NOCO, its parents, subsidiaries, affiliated entities under common ownership, shareholders, directors, officers, employees, attorneys, agents, representatives and its and their successors and assigns, and each entity to whom NOCO 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 alleged failure to warn about exposures to lead in Products sold or distributed for sale by NOCO prior to Effective Date.

In further consideration of the promises and agreements herein contained, Dr. 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 including, but not exclusively, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to the failure to warn about exposures to lead from Products sold or distributed for sale by NOCO prior to the Effective Date. The releases provided by Dr. Held under this Settlement Agreement are provided solely on Dr. Held's behalf and are not releases on behalf of the public. The Chanler Group, on behalf of itself and Dr. Held, represents that at the time of the execution of this Settlement Agreement, it is unaware of any other products sold by NOCO that are believed to be in violation of Proposition 65, other than the Products that are the subject of the January 27, 2017 Notice of Violation.

The parties acknowledge and agree that Dr. Held is not making any release or waiver under this Agreement in his capacity as a representative of the California general public or the state of California.

4.2 NOCO's Release of Dr. Held

NOCO 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 Dr. 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 Dr. 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining enforceable 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 NOCO may provide written notice to Dr. 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.

7. CONFIDENTIALITY OF AGREEMENT

Subject to the statutory requirements of Proposition 65, including that this Agreement be shared with the California Attorney General and posted to the website of the California Attorney General, the parties agree that the terms of this agreement including, but not limited to, the amount of the settlement payment in Section 3, are confidential and the parties and their counsel shall hold such terms in strict confidence; provided, however, that (i) the parties shall be entitled to disclose such terms to their respective attorneys and accountants, subject to such attorneys or accountants agreeing to hold the information in strict confidence in compliance with the terms of this agreement as if they were parties hereto; and (ii) disclosure shall be permitted if required by legal process, but not before the third business day after such party has both received notice of such process and has delivered a copy thereof to the other party. Neither party will voluntarily reveal or engage in any action which it knows or should know will result in the revelation of any information to any third party concerning the terms of this agreement, the contents of this agreement or the basis upon which the claims or potential claims of the parties have been settled and compromised. In the event either party or one of its representatives is asked about this agreement or NOCO's payment or nonpayment of the settlement amount, such party shall refrain from disclosing the substantive terms of the agreement, but may acknowledge that an agreement was reached by the Parties. However, in the event of any breach of this Settlement Agreement, including nonpayment

of the monetary amounts required under Section 3, Dr. Held and his counsel may bring any appropriate action or file any appropriate pleading or other documentation concerning such breach.

8. 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 with a copy via e-mail (if an email address is provided below):

For NOCO:

Jonathan Lewis Nook
The NOCO Company
30339 Diamond Parkway, #102
Glenwillow, OH 44139

For Dr. Held and Chanler Group:

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

Copy to:

KJK
1375 E. Ninth Street
Floor 29
Attn: Jon J. Pinney
Cleveland, Ohio 44114
jjp@kjk.com

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.

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

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

11. MODIFICATION

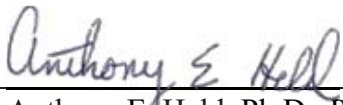
This Settlement Agreement may be modified only by written agreement of the Parties.

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: 7/27/2017

By: 
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: _____

By: _____
Jonathan Lewis Nook, President
The NOCO Company

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: _____

By: _____
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: 7/27/2017 _____

By:  _____
Jonathan Lewis Nook, President
The NOCO Company