

# 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 Bradshaw International, Inc. (“Bradshaw”), with Dr. Held and Bradshaw 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. Dr. Held alleges that Bradshaw 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 Bradshaw manufactures, sells, and/or distributes for sale in California, measuring cups with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Dr. Held alleges that Bradshaw failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to lead from its measuring cups with exterior designs. Bradshaw disputes Dr. Held’s allegations.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are measuring cups with exterior designs allegedly containing lead, including, but not limited to, the *Good Cook Measuring Glass, #19858, UPC #0 76753 19858 5*, manufactured, sold or distributed for sale in California by Bradshaw (“Products”).

### 1.4 Notice of Violation

On or about October 24, 2017, Dr. Held served Bradshaw and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that

Bradshaw violated Proposition 65 when it failed to warn its customers and consumers in California that its Products allegedly 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 of Liability**

Bradshaw 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 Bradshaw 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 Bradshaw of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bradshaw. However, this Section shall not diminish or otherwise affect Bradshaw'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 August 3, 2018.

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

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 120 parts per million ("ppm") lead when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance (e.g., ASTM C738-94 (2016)), and (b) yield no more than 1.2 micrograms ("µg") of lead when analyzed pursuant to NIOSH Test Method No. 9100.

### **2.2 Reformulation Commitment**

As of the Effective Date, Bradshaw 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.

### **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, Bradshaw agrees to pay a total of \$3,500.00 in civil penalties. 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Dr. Held.

Bradshaw will deliver its payment to the address in Section 3.3 below, within ten (10) days of the Effective Date, in two checks made payable as follows: (1) “OEHHA” in the amount of \$2,625; and (2) “Anthony E. Held, Client Trust Account” in the amount of \$875.00. Dr. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

#### **3.2 Attorneys’ Fees and Costs**

The Parties negotiated a resolution of the compensation due to Dr. 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, Bradshaw shall reimburse Dr. Held and his counsel \$18,000.00. Bradshaw’s payment shall be delivered to the address in Section 3.3, within ten (10) days of the Effective Date, in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Dr. Held investigating, bringing this matter to Bradshaw’s attention and negotiating a settlement of the matter.

### **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 Proposition 65 Claims**

Dr. Held, acting on his own behalf, and *not* on behalf of the public, releases Bradshaw, its parents, subsidiaries, successors, assigns, affiliated entities under common ownership, directors, officers, agents, employees, attorneys, and each entity to whom Bradshaw directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on the alleged unwarned exposures to lead in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged exposures to lead from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities, other than the Releasees, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Bradshaw.

### **4.2 Dr. Held's Individual Release of Claims**

Dr. Held, in his individual capacity only and *not* in his representative capacity, provides a release 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 Dr. Held of any

nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Bradshaw prior to the Effective Date, and which release includes Bradshaw's parents, subsidiaries, successors, assigns, affiliated entities under common ownership, directors, officers, agents, employees, and attorneys. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Bradshaw, other than the Releasees as defined in Section 4.1. Nothing in this Section affects Dr. Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Bradshaw's Products.

#### **4.3 Bradshaw's Release of Dr. Held**

Bradshaw, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter 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 Bradshaw specifically as a result of a statutory exemption, or as to the Products, then Bradshaw may

provide written notice to Dr. Held of any asserted change in the law, or its applicability to Bradshaw or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Bradshaw or the Products are so affected.

**7. 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 Bradshaw:

Brett Bradshaw, President  
Bradshaw International, Inc.  
9409 Buffalo Avenue  
Rancho Cucamonga, CA 91730

For Dr. Held:

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

with copy to Bradshaw's counsel:

Matthew S. Covington, Esq.  
Michael J. Worth, Esq.  
Buchalter, A Professional Corporation  
1000 Wilshire Boulevard, Suite 1500  
Los Angeles, California 90017-1730

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 electronic 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)

Dr. 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: 7/30/18

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

AGREED TO:

Date: 7/27/18

By:   
Brett Bradshaw, Co-President  
BRADSHAW INTERNATIONAL, INC.