

# 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 defendant Coda Resources Ltd. (“Coda Resources”), with Held and Coda Resources 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 contained in consumer products. Coda Resources employs ten or more individuals 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 and Safety Code section 25249.5 et seq. (“Proposition 65”).

### 1.2 General Allegations

Held alleges that Coda Resources manufactured, imported, distributed, and/or sold in the State of California electrical tape that contains di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Held alleges that Coda Resources failed to provide consumers and other individuals exposed to DEHP from the electrical tape it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as electrical tape containing DEHP that are manufactured, sold, or distributed for sale in California by Coda Resources including, but not limited to, the *Cambridge Zipits Electrical Kit, CT12130, UPC #6 80183 12130 5*.

#### **1.4 Notice of Violation**

On October 24, 2017, Held served Coda Resources, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Coda Resources violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

#### **1.5 No Admission**

Coda Resources denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 Coda Resources of any allegation, 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 Coda Resources of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Coda Resources. This Section shall not, however, diminish or otherwise affect Coda Resources’ 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 16, 2018.

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

### **2.1 Reformulation of Products**

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, Coda Resources shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are Reformulated Products as defined by Section 2.2,

below or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3 below.

## 2.2 Reformulation Standard

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain DEHP 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 DEHP content in a solid substance.

## 2.3 Clear and Reasonable Warning

Coda Resources shall provide a clear and reasonable warning for any Product that it manufactures for sale, purchases for sale, or imports for sale in California that is not a Reformulated Product. Coda Resources shall provide the warning affixed to the packaging or labeling with the following elements:

(1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING."

(2) The word "**WARNING:**" in all capital letters an bold print, followed by the statement: "This product can expose you to chemicals including DEHP, 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](http://www.P65Warnings.ca.gov)."

The following warning complies with these elements:

**⚠ WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods

of transmission different than those set forth above, Coda Resources shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

### **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, Coda Resources agrees to pay a total of \$2,500 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 Held.

Coda Resources will deliver its payment on or before March 28, 2018, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$625. 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 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. Coda Resources agrees to pay \$18,500 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Coda Resources’ management, and negotiating a settlement that provides a significant public benefit. Coda Resources’ payment shall be delivered in the form of a check payable to “The Chanler Group” on or before March 28, 2018.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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 Coda Resources**

This Settlement Agreement is a full, final, and binding resolution between Held, in his individual capacity and not on behalf of the public and Coda Resources, of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf, or on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Coda Resources, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Coda Resources directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date in California by Coda Resources, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Held, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership

or direction, representatives, attorneys, predecessors, successors, assignees and heirs hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Coda Resources and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65 regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by Coda Resources.

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 in California.

#### **4.2 Coda Resources' Release of Held**

Coda Resources, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held, Held's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Coda Resources 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 otherwise rendered inapplicable by reason of law generally, or as applied to the Products, then Coda Resources may provide written notice to Held of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so

affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by 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:

**Coda Resources:**

Samir J. Abdelnour, Esq.  
Hanson Bridgett LLP  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
SAbdelnour@hansonbridgett.com

**Held:**

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

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. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Any party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve the alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

**12. AUTHORIZATION**

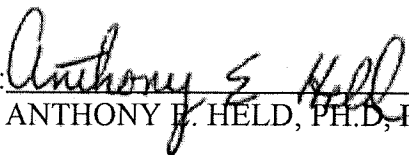
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all of the terms and conditions of this Settlement Agreement.

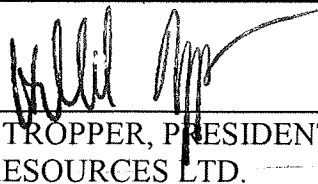
**AGREED TO:**

**AGREED TO:**

Date: 3/14/18

Date: 3/15/18

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

By:   
HILLEL TROPPER, PRESIDENT  
CODA RESOURCES LTD.