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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, PH.D., P.E.,

14 Plaintiff,

15 v.

16 GROTE INDUSTRIES, INC., *et al.*,

17 Defendants.
18

Case No. CGC-18-564286

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)
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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”), and Grote Industries, Inc. (“Grote”), with Held and Grote each individually referred to as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Grote employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Grote imports, sells, or distributes for sale in California, vinyl/PVC
16 electrical wires that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
18 to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC electrical wires containing
21 DEHP, including, but not limited to, the *Grote Lead Wires, #84-9613, UPC#6 21935 04343 8* that are
22 manufactured, imported, distributed, sold and/or offered for sale in California by Grote (“Products”).

23 **1.6 Notice of Violation**

24 On October 24, 2017, Held served Grote, and the requisite public enforcement agencies with a
25 60-Day Notice of Violation (“Notice”) alleging that Grote violated Proposition 65 by failing to warn
26 its customers and consumers in California of the health hazards associated with exposures to DEHP
27 from the Products. No public enforcer has commenced and is diligently prosecuting an action to
28 enforce the violations alleged in the Notice.

1 **1.7 Complaint**

2 On February 13, 2018, Held filed the instant action (“Complaint”), naming Grote as a
3 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

6 Grote denies the material, factual, and legal allegations contained in the Notice and
7 Complaint, and maintains that all of the products it has sold or distributed for sale in California,
8 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
9 Judgment shall be construed as an admission by Grote or by any of its officers, directors,
10 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchises,
11 licensees, customers, suppliers, manufacturers, distributors, wholesalers, or retailers of any fact,
12 finding, conclusion of law, issue of law, or violation of law, fault, wrongdoing, or liability, the same
13 being specifically denied by Grote, nor shall compliance with this Consent Judgment constitute or be
14 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,
15 fault, wrongdoing, or liability. This Section shall not, however, diminish or otherwise affect Grote’s
16 obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Grote as to the allegations in the Complaint, that venue is proper in the County of
20 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the Court approves this Consent Judgment, including any unopposed ruling granting approval of this
25 Consent Judgment.

1 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing on the Effective Date and continuing thereafter, Grote agrees to only
4 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)
5 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
6 reasonable health hazard warning pursuant to Section 2.3 below.

7 **2.2 Reformulation Standard**

8 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
9 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed
10 pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C
11 or equivalent methodologies utilized by state or federal agencies for the purpose of determining
12 DEHP content in a solid substance.

13 **2.3 Clear and Reasonable Warnings**

14 Commencing on the Effective Date and continuing thereafter, for any Products sold or
15 distributed for sale in California by Grote that are not Reformulated Products, Grote agrees to only
16 sell or distribute such Products for sale in California with a clear and reasonable warning in
17 accordance with this Section or Title 27 California Code of Regulations section 25602 and 25603.
18 Grote further agrees that any warning used will be prominently placed in relation to the Products with
19 such conspicuousness when compared with other words, statements, designs, or devices as to render
20 it likely to be read and understood by an ordinary individual under customary conditions of purchase
21 or use. For purposes of this Consent Judgment, a warning satisfying the above criteria that is affixed
22 directly to a Product or its accompanying labeling or packaging containing the following statement
23 shall be deemed clear:

24
25  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

1 Notwithstanding anything herein to the contrary, the foregoing shall not prohibit Grote from including
2 the same or a similar warnings in languages other than English that are in accordance with this section
3 or Title 27 California Code of Regulations section 25600.1(c) and 25602 (d).

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
7 referred to in the Notice, Complaint, and this Consent Judgment, Grote shall pay \$2,500 in civil
8 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
9 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
10 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
11 (25%) of the penalty retained by Held. Held’s counsel shall be responsible for delivering OEHHA’s
12 portion of any penalty payment(s) made under this Consent Judgment. Grote shall provide its
13 payment in a check made payable to “Anthony E. Held, Client Trust Account” in the amount of \$625
14 and a check made payable to “OEHHA” in the amount of \$1,875 to be delivered to the address
15 provided in Section 3.3, below.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Held and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
21 his counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
23 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
24 on appeal, if any. Under these legal principles, Grote shall pay \$26,000 for all fees and costs incurred
25 by Held investigating, bringing this matter to Grote’s attention, litigating and negotiating a settlement
26 in the public interest. Grote’s payment shall be delivered to the address in Section 3.4 in a check
27 payable to “The Chanler Group.”
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1 **3.3 Payment Timing; Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties' settlement. Within five (5) days of the date that this Consent Judgment is
4 fully executed by the Parties, all payments due under this agreement shall be delivered to Grote's
5 counsel and held in trust until the Effective Date. Grote's counsel shall provide Held's counsel with
6 written confirmation upon its receipt of the settlement payments. Within five days of the Effective
7 Date, Grote's counsel shall deliver the civil penalty and attorneys' fee reimbursement payments to
8 Held's counsel.

9 **3.4 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Held's Public Release of Proposition 65 Claims**

18 Held, acting on his own behalf and in the public interest, releases Grote and its parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, shareholders,
20 employees, and attorneys ("Releasees"), and each entity to whom Grote directly or indirectly
21 distributes or sells the Products including, without limitation, its downstream customers,
22 distributors, wholesalers, and retailers ("Downstream Releasees") for any violation arising under
23 Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or
24 distributed for sale by Grote prior to the Effective Date, as set forth in the Notice. Compliance with
25 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
26 exposures to DEHP from Products sold or distributed for sale by Grote after the Effective Date.
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1 **4.2 Held’s Individual Release of Claims**

2 Held, in his individual capacity only and *not* in any representative capacity, also provides a
3 release to Grote, Releasees, and Downstream Releasees, which shall be effective as a full and final
4 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
6 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to DEHP in Products sold or distributed for sale by Grote before the Effective Date.

8 **4.3 Grote’s Release of Held**

9 Grote, on its own behalf, and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims against Held, and his
11 attorneys and other representatives, for any and all actions taken or statements made by Held, and
12 his attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

14 **4.4 Mutual Waiver of California Civil Code Section 1542**

15 The Parties each acknowledge that he/it is familiar with Section 1542 of the Civil Code,
16 which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
18 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

21 The Parties, each on his/its own behalf (and Held in his individual capacity only and not in
22 any representative capacity), and on behalf of his/its past and current agents, representatives, counsel,
23 successors, and/or assignees, expressly waive and relinquish any and all rights and benefits that they
24 may have under, or that may be conferred upon them by the provisions of Civil Code section 1542 as
25 well as under any other state or federal statute or common law principle of similar effect, to the
26 fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as
27 defined by Sections 4.2 and 4.3, above.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if it is not approved and entered by the Court within one year after it has been fully
4 executed by the Parties, or by such additional time as the Parties may agree in writing.

5 **6. SEVERABILITY**

6 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California
11 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
12 rendered inapplicable by reason of law generally or as to the Products, then Grote may provide
13 written notice to Held of any asserted change in the law, and shall have no further obligations
14 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

15 **8. NOTICE**

16 Unless specified herein, all correspondence and notice required by this Consent Judgment
17 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
18 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

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20 For Grote:

21 Dominic Grote, CEO
22 Grote Industries, Inc.
23 2600 Lanier Drive
24 Madison, IN 47250

25 with a copy to:

26 Thomas L. Xanders, Esq.
27 Graydon Head & Ritchey
28 312 Walnut Street, Suite 1800
 Cincinnati, OH 45202

1 For Held:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

7 Any Party may, from time to time, specify in writing to the other, a change of address to which all
8 notices and other communications shall be sent.

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
12 same document.

13 **10. POST EXECUTION ACTIVITIES**

14 Held agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
17 motion Held shall draft and file. In furtherance of obtaining such approval, the Parties agree to
18 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
19 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
20 this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
21 responding to any objection that any third-party may file or lodge, and appearing at the hearing
22 before the Court if so requested.

23 **11. MODIFICATION**

24 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
25 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
26 of any Party, and the entry of a modified consent judgment thereon by the Court.
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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
3 have read, understand, and agree to all of the terms and conditions contained herein.
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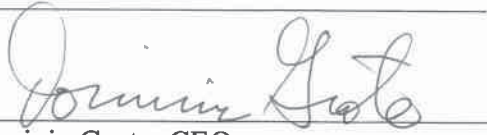
5 **AGREED TO:**

AGREED TO:

6
7 Date: 3/29/2018

Date: _____

8
9 By: 
10 ANTHONY E. HELED, PH.D., P.E.

By: 
11 Dominic Grote, CEO
12 GROTE INDUSTRIES, INC.
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