

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

### 1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC gloves containing DINP that are manufactured, sold or distributed for sale in the State of California by Pro-Stat, including, but not limited to, the *Emerald BLUE Powder Free Vinyl Gloves, Item #7122, UPC #6 04539 00122 6*, (“Products”).

### 1.4 Notice of Violation

On April 24, 2015 Held served Pro-Stat, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Pro-Stat 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**

Pro-Stat 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 Pro-Stat 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 Pro-Stat of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pro-Stat. However, this Section shall not diminish or otherwise affect Pro-Stat'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 March 11, 2016.

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

On or before March 15, 2016 and continuing thereafter, Pro-Stat agrees to only manufacture for sale, distribute for sale, offer 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 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies 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 § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Pro-Stat agrees to pay \$2,500 in civil penalties. The civil penalty payment will be allocated in accordance with California Health and Safety Code § 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. Pro-State shall deliver its payment within five days of the Effective Date, in a single check made payable to “Anthony E. held, Client Trust Account.” Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment.

**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 § 1021.5 for all work performed in this matter. Under these legal principles, Pro-Stat agrees to pay \$17,000 to Held and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Pro-Stat’s management, and negotiating this Settlement Agreement. Within five days of the Effective Date, Pro-Stat shall remit its payment in the form of a single check made payable to “The Chanler Group” and delivered to the address in Section 3.3, below.

**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 Pro-Stat**

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and not on behalf of the public, and Pro-Stat, of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees against Pro-Stat, its parents, subsidiaries, and affiliated entities under common ownership, including, but not limited to, Emerald Professional Protection Products, directors, officers, employees, attorneys, and each

entity to whom Pro-Stat directly or indirectly distributes or sells Products, including, but not limited, to Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DINP in Products manufactured, distributed, sold and/or offered for sale by Pro-Stat in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Held as an individual and not on behalf of the public, 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 Products that were manufactured, distributed, sold and/or offered for sale by Pro-Stat, before the effective date, as alleged in the Notice, against Pro-Stat 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 Pro-Stat’s Release of Held**

Pro-Stat, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, assignees, and/or Releasees hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements 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. DISMISSAL OF HELD V. EMERALD MEDICAL, INC.**

On the later of 15 days following the Effective Date or 15 days after Held's receipt of the civil penalty and fee reimbursement payments required by Sections 3.1 and 3.2, Held agrees to file a dismissal without prejudice of the entire action pending in Marin Superior Court, *Held v. Emerald Medical, Inc.*, Case No. CIV1504241.

**6. 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 injunctive provisions remaining shall not be adversely affected.

**7. 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 Pro-Stat specifically as a result of a statutory exemption, or as to the Products, then Pro-Stat may provide written notice to Held of any asserted change in the law, or its applicability to Pro-Stat or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Pro-Stat or the Products are so affected.

**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:

For Pro-Stat:

Patrick McCrann, President  
Pro-Stat, Inc.  
285 Pierce Street  
Somerset, NJ 08873

For Held:

Proposition 65 Coordinator  
The Chanler Group  
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.

**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)**

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

**11. MODIFICATION**

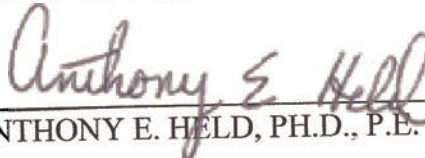
This Settlement Agreement may be modified only by written agreement of the Parties.

**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.

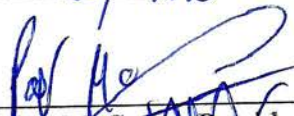
**AGREED TO:**

Date: 3/14/16

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

**AGREED TO:**

Date: 3/8/16

By:   
Patrick McCann, President  
PRO-STAT, INC.