

# **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 TG Medical (U.S.A.), Inc. (“TG Medical”), with Held and TG Medical each referred to individually as a “Party” and collectively as the “Parties.”

### **1.2 Held**

Held is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

### **1.3 TG Medical**

Held alleges that TG Medical 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 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

### **1.4 General Allegations**

Held alleges that TG Medical manufactured, imported, sold and/or distributed for sale in California vinyl/PVC gloves that contain diisononyl phthalate (“DINP”), without first providing the requisite Proposition 65 warning. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

### **1.5 Product Description**

The products covered by this Settlement Agreement are vinyl/PVC gloves containing DINP, manufactured, distributed and/or sold in California by TG Medical, including, but not limited to, the *Skintx Vinyl Powder Free Examination Gloves, #70010, UPC #8 58464 00272 2* (hereinafter, the “Products”).

## **1.6 Notice of Violation**

On April 24, 2015, Held served TG Medical and the requisite public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”), alleging that TG Medical violated Proposition 65 when it failed to warn its customers in California that the Products expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

## **1.7 No Admission**

The Parties enter into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, arising out of the facts and/or conduct alleged therein. TG Medical denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by TG Medical of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by TG Medical of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect TG Medical’s obligations, responsibilities, and duties under this Settlement Agreement.

## **1.8 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 18, 2015.

## **2. INJUNCTIVE SETTLEMENT TERMS**

Commencing on March 30, 2016, and continuing thereafter, TG Medical shall only manufacture, distribute and sell in California, Reformulated Products. For purposes of this Settlement Agreement, “Reformulated Products” are defined as Products with a maximum DINP concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other

methodologies utilized by state or federal agencies for the purpose of determining DINP content in a solid substance.

### **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), in complete settlement of all the claims referred to in this Settlement Agreement, TG Medical shall pay a total of \$8,000 in civil penalties as specified in Sections 3.1.1 and 3.1.2 below. Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Held. Held and his counsel shall have sole responsibility for transmitting to OEHHA any required portions of the civil penalty payments.

##### **3.1.1 Initial Civil Penalty**

TG Medical shall make an initial civil penalty payment of \$2,500. On or before the Effective Date, TG Medical shall issue a check to “Dr. Anthony E. Held, Client Trust Account” in the amount of \$2,500. All penalty payments shall be delivered to the address listed in Section 3.3 below.

##### **3.1.2 Final Civil Penalty**

On January 31, 2016, TG Medical shall make a final civil penalty payment of \$5,500 sent to the address in Section 3.3 below. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than January 15, 2016, an officer of TG Medical provides Held with written certification that all of the Products it is selling in California or distributing for sale in California as of the date of such certification are Reformulated Products as defined by Section 2.1, and that TG Medical will continue to offer only Reformulated Products for sale in California in the future. The option to certify to expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and with regard to such term, time is of the essence. TG Medical shall deliver its certificate, if any, to Held’s counsel at the address provided in Section 3.3,

below. In the event that TG Medical does not timely certify its compliance or make the final civil penalty payment required by this Section, the Parties agree that Held may file a motion or application seeking an order compelling TG Medical's compliance with this Section. The Parties further agree that should Held have to file such a motion, he shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and Code of Civil Procedure section 1021.5.

### **3.2 Reimbursement of Attorneys' Fees and Costs**

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, TG Medical expressed a desire to resolve Held's fees and costs. The Parties then attempted to (and did) reach an accord that TG Medical will pay Held and his counsel \$20,500 in complete resolution of any claim for compensation due to 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 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting and finalizing this Settlement Agreement in the public interest. Accordingly, TG Medical shall issue a check payable to "The Chanler Group" in the amount of \$20,500 on or before the Effective Date and send it to the address set forth 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 TG Medical**

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public, and TG Medical, of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees (“Releasers”), and Releasers hereby release any such claims, against TG Medical, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom TG Medical 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 failure to warn about alleged exposures to DINP contained in Products manufactured, distributed, sold or offered for sale by TG Medical in California before the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by TG Medical with respect to the alleged or actual failure to warn about exposures to DINP from Products manufactured, imported, sold or distributed for sale by TG Medical after the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees but *not* on behalf of the public, hereby covenants not to sue and 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 Products manufactured, distributed, sold and/or offered for sale by TG Medical before the Effective Date.

Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Held, in his individual capacity only, and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to Products manufactured, imported, distributed or sold by TG Medical before the Effective Date.

#### **4.2 TG Medical's Release of Held**

TG Medical, 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 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 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.

TG Medical acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

TG Medical expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to Products manufactured, imported, distributed or sold before the Effective Date..

**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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, or DINP, then TG Medical may provide Held with written notice 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. Nothing in this Settlement Agreement shall be interpreted to relieve TG Medical from its obligation to comply with any pertinent state or federal law or regulation.

**7. NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the following addresses:

**TG Medical:**

David Lim, President  
TG Medical (U.S.A.), Inc.  
165 North Aspan Avenue  
Azusa, CA 91702

**With Copy to:**

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th Floor  
San Francisco, CA 94104

**Held:**

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

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

**8. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

**9. COUNTERPARTS, FACSIMILE AND PDF 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 REPORTING REQUIREMENTS**

Held and his counsel 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**

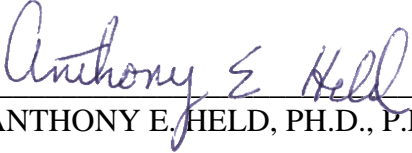
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 12/9/15

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
David Lim, President  
TG MEDICAL (U.S.A.), INC.

**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: 12/9/15

By: David Lim  
David Lim, President  
TG MEDICAL (U.S.A.), INC.