

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 Fluke Corporation (“Fluke”), with Held and Fluke collectively referred to as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Fluke 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Fluke manufactures, distributes, and/or sells in the state of California soft carrying cases containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable consumer warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is the *Fluke Soft Case, C25, Item No. 681114 (#0 95969 00637 8)* sold in California by Fluke, that Held alleges contains DEHP (hereinafter the “Products”).

1.4 Notice of Violation

On or about March 29, 2012, Held served Fluke and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Fluke was alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP. 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

Fluke denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, sold, or distributed 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 Fluke 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 Fluke of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Fluke. This section shall not, however, diminish or otherwise affect Fluke'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 15, 2013.

2. INJUNCTIVE RELIEF

2.1 By no later than August 1, 2013, any Products manufactured after that date that Fluke thereafter distributes, ships, sells, or offers to ship, for sale in California, shall not exceed a maximum concentration, by weight, of each of DEHP, di-n-butyl phthalate ("DBP"), and/or butyl benzyl phthalate ("BBP"), of 1,000 parts per million (0.1%) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining phthalate content in a solid substance (the "Reformulation Standard"). DEHP, DBP, and BBP are collectively referred to as the "Listed Chemicals" for purposes of this Settlement Agreement.

2.2 As an interim measure until Fluke meets the Reformulation Standard in Section 2.1, any Products that Fluke distributes, ships, sells, or offers to ship, for sale in California after the Effective Date shall meet the warning requirements of this Section 2.2.

Fluke shall provide one of the following warnings:

[California Proposition 65] WARNING: This product contains a chemical [chemicals] known to the State of California to cause [cancer and] birth defects or other reproductive harm.

Or

[California Proposition 65] WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm.

Terms in the warning language appearing in brackets are optional. The warning shall be securely affixed to or printed upon the Product or the Product packaging. The warning shall be displayed with such conspicuousness, as compared with other words, statements, or design, to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. The word “warning” shall be in all capital letters and in bold print.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Fluke shall pay a total of \$12,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

3.1 Initial Civil Penalty

Fluke shall pay an initial civil penalty in the amount of \$3,000 on or before the Effective Date. Fluke shall issue two separate checks to: (a) “Office of Environmental Health Hazard Assessment” in the amount of 2,250; and (b) “The Chanler Group in Trust for Dr. Anthony Held” in the amount of \$750. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 Final Civil Penalty

Fluke shall pay a final civil penalty of \$9,000 on or before September 1, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than August 15, 2013, an officer of Fluke provides Held with written certification that, as of the date of such certification and

continuing into the future, Fluke has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Fluke are Reformulated Products. Held must receive any such certification on or before August 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Fluke shall issue two separate checks for its final civil penalty payments to: (a) "Office of Environmental Health Hazard Assessment" in the amount of \$6,750; and (b) "The Chanler Group in Trust for Dr. Anthony Held" in the amount of \$2,250.

3.3 Payment Procedures

3.3.1. Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Held, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Fluke shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Held then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Fluke shall pay \$41,000 for fees and costs incurred as a result of investigating, bringing this matter to Fluke's attention, and negotiating a settlement in the public interest. Fluke shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1 above.

5. CLAIMS COVERED AND RELEASED

5.1 Held's Release of Fluke

This Settlement Agreement is a full, final, and binding resolution between Held and Fluke 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 assignees, against Fluke, its parent company, Danaher Corp., Fluke's subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Fluke directly or indirectly distributes or sells the Products, including, but not limited to,

its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and the predecessors, successors, and assigns of any of them (collectively, the “Releasees”), based on the alleged failure to warn about exposures to DEHP contained in Products.

In further consideration of the promises and agreements herein contained, Held, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against the Releasees, 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, without limitation, investigation fees, expert fees, and attorneys’ fees (collectively, “Claims”) arising under Proposition 65 for unwarned exposures to DEHP in Products.

Held also, on behalf of himself and his agents, attorneys, representatives, successors and assigns, in his respective individual capacity only and *not* in his representative capacity, provides a general release of the Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65, or any other statute or common law, with respect to alleged exposures to, or failure to warn of alleged exposures to, any of the Listed Chemicals in the Products. 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.

5.2 Fluke’s Release of Held

Fluke, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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.

Fluke also, on behalf of itself and its agents, attorneys, representatives, successors and assigns, provides a general release of Held 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 Fluke of any nature, character or kind, known or unknown, suspected or unsuspected, relating to alleged violations of Proposition 65 with respect to the Products as set forth in the Notice. Fluke 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.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Fluke may send Held a written request to draft and file a complaint based on the allegation in the Notice, to incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Held and Fluke agree to reasonably cooperate and to use their best efforts, and that of their counsel, to support the entry of the terms of this Settlement Agreement as a consent judgment by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Fluke will reimburse Held and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting the terms of the Settlement Agreement pertaining to DEHP in the Product into a

proposed consent judgment, and seeking judicial approval of the consent judgment, in an amount not to exceed \$15,000, exclusive of fees and costs incurred on appeal, if any. Fluke will remit payment to The Chanler Group, at the Payment Address provided in Section 3.3. Such additional fees shall be paid by Fluke within ten days after its receipt of monthly invoices from Held's counsel for work performed under this Section.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Fluke may provide written notice to Held 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.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to 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 on any party by the other party at the following addresses:

For Fluke:

President, Fluke Corporation
6920 Seaway Boulevard
Everett, WA 98203

with a copy to:

Sarah Esmaili, Esq.
Arnold & Porter LLP

3 Embarcadero Center, 7th Floor
San Francisco, CA 94111

For Held:

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.

10. 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.

11. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code section 25249.7(f).

12. MODIFICATION

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

13. 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:

APPROVED
By Tony Held at 9:03 pm, Feb 05, 2013

Date: _____

By: Anthony E Held
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: _____

By: _____

Name: _____

Title: _____
Fluke Corporation

AGREED TO:

Date: _____

By: _____
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: February 12, 2013

By: _____

Name: _____
William Pringle

Title: Vice President
Fluke Corporation