

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Bond Manufacturing Co., Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and Bond Manufacturing Co., Inc. (“Bond”), with Dr. Held and Bond collectively referred to as the “Parties.” Dr. Held is an individual residing in 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. For purposes of this Settlement Agreement, the parties agree that Bond 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 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Dr. Held alleges that Bond manufactures, imports, sell and/or distribute for sale in California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Dr. Held alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC tape containing DEHP including, but not limited to, *Bond Garden Tie Tape, #1150, UPC #0 35355 01150 0* that are manufactured, imported, distributed, sold and/or offered for sale by Bond in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about January 27, 2017, Dr. Held served Bond, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Bond violated

Proposition 65 when it failed 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

Bond denies the material, factual and legal allegations contained in the Notice and maintains that all 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 Bond of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Bond of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 26, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing 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 any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, and excluding Products imported, distributed, sold, or offered for sale in California prior to the Effective Date, Bond shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products


pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

Commencing on or before the Effective Date, Bond shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) for all Products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.


(a) Retail Store Sales.

(i) **Product Labeling.** Bond shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:


 **WARNING:** This product can expose you to DEHP, which is 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.

(b) **Mail Order Catalog and Internet Sales.** In the event that Bond sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Bond shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:


 **WARNING:** This product can expose you to DEHP, which is 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.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Bond may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):


 **WARNING:** Certain products identified with this symbol ▼ can expose you to DEHP, which is 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.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Bond must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

 **WARNING:** This product can expose you to DEHP, which is 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.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

 **WARNING:** This product can expose you to DEHP, which is 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, Bond shall pay \$4,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code sections 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Dr. Held. No later than June 30, 2017, Bond shall provide its payment in a check made payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$1,000 and a check made payable to “OEHHA” in the amount of \$3,000, to be delivered to the address provided in Section 3.3, below. Dr. Held’s counsel shall be responsible for remitting Bond’s penalty payment under this Settlement Agreement to OEHHA.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge that Dr. 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 the agreement had been settled. Shortly after the other settlement terms had been finalized, Bond expressed a desire to resolve Dr. Held’s fees and costs. The Parties then negotiated a resolution of the compensation due to Dr. 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 through the mutual execution of this agreement, Bond shall reimburse Dr. Held and his counsel

\$22,000. Bond's payments shall be delivered to the address in Section 3.3, no later than June 30, 2017, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Dr. Held investigating, bringing this matter to Bond's attention and negotiating a settlement of the matter in the public interest.

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 Dr. Held's Release of Proposition 65 Claims

Dr. Held acting on his own behalf, and *not* on behalf of the public, releases Bond, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Bond directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Bond.

4.2 Dr. Held's Individual Releases of Claims

Dr. Held, in his individual capacity only and *not* in his representative capacity releases Releasees from all actions, causes of action, obligations, costs, expenses, attorneys' fees,

damages, losses, claims, liabilities, and demands of Dr. Held of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Bond prior to the Effective Date (“Claims”). This release shall be effective as a full and final accord and satisfaction and as a bar to all such Claims. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Bond. Nothing in this Section affects Dr. Held’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Bond’s Products.

4.3 Bond’s Release of Dr. Held

Bond, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Dr. 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 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

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 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then

Bond shall provide written notice to Dr. Held of any asserted change in the law and shall have no further injunctive 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 Bond from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Bond:

Daryl Merritt, Chief Executive Officer
Bond Manufacturing Co., Inc.
1700 West 4th Street
Antioch, CA 94509

With a Copy to:

David M. Metres, Esq.
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435

For Dr. Held:

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

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

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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 SECTION 25249.7(f)**

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

10. **MODIFICATION**

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

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

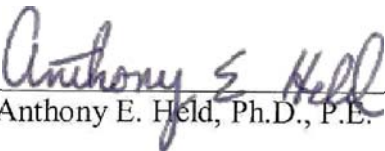
AGREED TO:

Date: 6/25/2017


Date:

6/23/2017

By:


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

By:


Daryl Merritt, Chief Executive Officer
Bond Manufacturing Co., Inc.