

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 Paul Wozniak (“Wozniak”) on the one hand, and Fruit of the Earth, Inc. (“FOTE”) on the other hand, with Held, Wozniak and FOTE each individually referred to as a “Party” and collectively as the “Parties.” Held and Wozniak are each individuals residing in California who seek to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. FOTE 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Held and Wozniak allege that FOTE manufactures, imports, sells, or distributes for sale in the state of California, sunscreen that contains benzophenone without first providing the clear and reasonable health hazard warning required by Proposition 65.

1.3 Product Description. The products covered by this Settlement Agreement are sunscreens alleged to contain benzophenone that are manufactured, sold, or distributed for sale in California by FOTE including, but not limited to: (i) *Equate Broad Spectrum SPF 70 Sport Sunscreen Continuous Spray, GN 2874.68621, UPC # 0 78742 14229 6* (“Wal-Mart Products”); (ii) *CVS Pharmacy 100 Sport Clear Spray Broad Spectrum SPF 100+ UVA/UVB Protection Sunscreen, #822572, UPC #0 50428 74224 2* (“CVS Products”); (iii) *Up & Up Baby Sunscreen Broad Spectrum SPF 50 Spray, SPF 55 Stick, UPC #0 71661 82222 5* (“Target Products”); and *Equaline Ultra Protection Sunscreen Lotion SPF 50, UPC# 0 41163 48478 8* (“Supervalu Products”) (collectively, “Products”). All of the Products are topical (dermal) sunscreen products.

1.4 Notices of Violation.

1.4.1 On April 16, 2014, Held served Wal-Mart Stores, Inc. (“Wal-Mart”), others and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Wal-Mart Notice”), alleging that Wal-Mart violated Proposition 65 when it failed to warn its customers and consumers in California that the Wal-Mart Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Wal-Mart Notice. Also, on April 16, 2014, Held served CVS Caremark Corporation and CVS Pharmacy, Inc. (collectively “CVS”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (“CVS Notice”), alleging that CVS violated Proposition 65 when it failed to warn its customers and consumers in California that the CVS Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the CVS Notice.

1.4.2 On June 4, 2014, Held served Target Corporation (“Target”), FOTE and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Target Notice”), alleging that Target violated Proposition 65 when it failed to warn its customers and consumers in California that the Target Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Target Notice.

1.4.3 On June 4, 2014, Wozniak served Supervalu Inc. (“Supervalu”) and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supervalu Notice”), alleging that Supervalu violated Proposition 65 when it failed to warn its customers and consumers in California that the Supervalu Products expose users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Supervalu Notice.

The Wal-Mart Notice, CVS Notice, Target Notice and Supervalu Notice shall hereinafter collectively be referred to as the “Notices.”

1.5 No Admission. FOTE denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products it has manufactured, 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 FOTE 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 FOTE of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by FOTE. This section shall not, however, diminish or otherwise affect FOTE'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 January 1, 2015.

2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS

2.1 Compliance Standards

"Compliant Products" are defined as those Products containing benzophenone in concentrations less than or equal to 12.5 parts per million ("ppm") when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the benzophenone content in a substance of the form of the Products herein.

2.2 Compliance

Commencing on the Effective Date, and continuing thereafter, FOTE shall not manufacture, or cause to be manufactured, or order for distribution or sale in California, Products unless they are Compliant Products pursuant to Section 2.1 above, or carry the Proposition 65 warnings specified in Section 2.3 below.

2.3 Product Warnings

As of the Effective Date, FOTE shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products that do not qualify as Compliant 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. FOTE 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 contains benzophenone, a chemical known to the State of California to cause cancer.

Or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

(ii) Point-of-Sale Warnings. Alternatively, FOTE may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to FOTE's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains benzophenone, a chemical known to the State of California to cause cancer.

Or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Compliant Products as defined in Sections 2.1 and 3.1.2), the following statement shall be used:¹

WARNING: The following products contains benzophenone, a chemical known to the State of California to cause cancer.

[list products for which warning is required]

Or,

WARNING: The following products contains a chemical known to the State of California to cause cancer.

[list products for which warning is required]

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

[list products for which warning is required]

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

[list products for which warning is required]

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

(b) Mail Order Catalog and Internet Sales. In the event that FOTE's sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Compliant Products, FOTE 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 contains benzophenone, a chemical known to the State of California to cause cancer.

Or,

WARNING: This product contain a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

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, FOTE 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 ▼ and offered for sale in this catalog contain a chemical, benzophenone, known to the State of California to cause cancer.

Or,

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

Or,

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer.

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, FOTE 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 contains benzophenone, a chemical known to the State of California to cause cancer.

Or,

WARNING: This product contain a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

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 contains benzophenone, a chemical known to the State of California to cause cancer.

Or,

WARNING: This product contains a chemical known to the State of California to cause cancer.

For Products that contain two or more carcinogens, the warning label shall state:

WARNING: This product contains chemicals, including benzophenone, known to the State of California to cause cancer.

Or,

WARNING: This product contains chemicals known to the State of California to cause cancer.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. FOTE agrees to an assessment of \$154,000 as civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Held and Wozniak¹.

3.1.1 Initial Civil Penalty. On, or before, January 1, 2015, FOTE shall make an initial civil penalty payment of \$34,000. FOTE shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$25,500; and (b) “The Chanler Group in Trust” in the amount of \$8,500. The initial civil penalty payments are to be delivered to Held, Wozniak and OEHHA at the addresses provided in section 3.3.

3.1.2 Second Civil Penalty. On or before January 1, 2016, FOTE will make a second civil penalty payment of \$60,000 Pursuant to title 11 California Code of Regulations section 3203(c), the second civil penalty payment will be waived in its entirety if, no later than December 15, 2015, an officer of FOTE certifies in writing to Held and Wozniak’s counsel that, as of such date and continuing into the future, one-hundred percent (100%) of the Products FOTE manufactures for sale, purchases for sale and offers for sale in California contain benzophenone in concentrations less than or equal to 10 ppm when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology for determining the benzophenone content in a substance of the form of the Products. The certification in lieu of making the second civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence. Unless waived, FOTE shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$45,000; and (b) “The Chanler Group in Trust” in the amount of

¹ Any and all payments issued to Held and Wozniak under sections 3.1.1–3.1.3 shall be apportioned as follows: (i) 75% of the penalty amount shall be designated for payment to Held; and (ii) 25% of the penalty amount shall be designated for payment to Wozniak.

\$15,000. The second civil penalty payments are to be delivered to Held, Wozniak and OEHHA at the addresses provided in section 3.3.

3.1.3 Final Civil Penalty. On or before January 1, 2017, FOTE will make a third civil penalty payment of \$60,000. Pursuant to title 11 California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than December 15, 2016, an officer of FOTE certifies in writing to Held's counsel that, as of such date and continuing into the future, one-hundred percent (100%) of the Products FOTE manufactures for sale, purchases for sale and offers for sale in California contain benzophenone in concentrations less than or equal to 5 ppm when analyzed pursuant to a scientifically reliable application of U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other scientifically reliable methodology utilized by federal or state agencies for the purpose of determining the benzophenone content in a substance of the form the Products herein. The certification in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence. Unless waived, FOTE shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$45,000; and (b) "The Chanler Group in Trust" in the amount of \$15,000. The final civil penalty payments are to be delivered to Held, Wozniak and OEHHA at the addresses provided in section 3.3.

3.1.4 All Products that not do not meet the compliance standards as set forth in sections 2.1, according to the terms and conditions of each section respectively, shall carry the Proposition 65 warnings per section 2.2 above.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Held, Wozniak and their counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, FOTE shall pay \$128,000 for all fees and costs through execution of this Settlement Agreement, including fees and costs incurred investigating, bringing this matter to the attention of FOTE's management, and negotiation of this settlement.

3.3 Payment Procedures. Except for the second and final civil penalties provided in Section 3.1.2 and 3.1.3, all payments under this Settlement Agreement are due on or before January 1, 2015 and shall be delivered according to the following subsections.

3.3.1 Payment Address for Held, Wozniak and Their Counsel. All payments and tax documentation required for Held, Wozniak and their counsel under 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

3.3.2 Payment Addresses for OEHHA. All payments and tax documentation required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) to one of the following addresses, as appropriate:

For United States Postal Delivery:

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

For Courier or other Non-U.S. Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

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

4. CLAIMS COVERED AND RELEASED

4.1 Held and Wozniak's Release of FOTE. This Settlement Agreement is a full, final, and binding resolution between Held, Wozniak and FOTE of any violation of Proposition 65 that was or could have been asserted by Held and/or Wozniak, on behalf of themselves, or on behalf of their past and current agents, representatives, attorneys, successors, and assignees, against FOTE, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom FOTE directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers (including but not limited to Target, Walmart, CVS and Supervalu), franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to benzophenone from Products manufactured, sold or distributed for sale in California by FOTE prior to the Effective Date. The Parties acknowledge that this release shall not extend to entities upstream of FOTE.

In further consideration of the promises and agreements herein contained, Held and Wozniak, each on their own behalf and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that they may have against FOTE and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to benzophenone from Products manufactured, sold, or distributed for sale in California by FOTE prior to the Effective Date. The Parties acknowledge that this release shall not extend to entities upstream of FOTE. The releases in Section 4.1 are provided in each Held's and Wozniak's individual capacity and are not releases on behalf of the public.

4.2 FOTE's Release of Held and Wozniak. FOTE, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and/or Wozniak and their 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/or Wozniak and their 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. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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. Benzophenone is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, including the delisting of benzophenone, then FOTE may provide written notice to Held and Wozniak of any asserted change in the law, and with the exception of sections 3.1.1 and 3.2 above, have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

7. NOTICE

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 at the following addresses:

For FOTE:

John A. Dondrea, Esq.
Fruit of the Earth, Inc.
3101 High River Rd Ste 175
Fort Worth, TX 76155-1906

For Held and Wozniak:

The Chanler Group
Attn: Proposition 65 Coordinator
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. 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.

9. POST-EXECUTION ACTIVITIES

Held and Wozniak agree to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. MODIFICATION

a. In the event that any future settlement agreement or court approved consent judgment entered into by Held and/or Wozniak involving another party, sets out a reformulation or compliance standard above that which is found in section 2.1 above, for benzophenone in substantially similar sunscreen products (e.g. a settlement covering children's sunscreen lotion would be appropriate for comparison to children's sunscreen lotion that is manufactured by FOTE), then upon written notice to Held and/or Wozniak, FOTE is entitled to a corresponding modification to the corresponding standard set forth in section 2.1, with regard to the Products of this Settlement Agreement.

b. In the event OEHHA designates a No-Significant Risk Level (“NSRL”) for benzophenone, which FOTE asserts would allow for the Products to contain levels of benzophenone in amounts greater than those set forth above in Section 2.1, FOTE may provide written notice to Held and Wozniak of any assertion and the Parties shall confer within 30 days to attempt to agree upon positional modification of this Settlement Agreement. Should such attempts at informal resolution of a modification fail, and in the event FOTE still intends to change its reformulation obligations, FOTE will provide written notice to Held and Wozniak of its intent to adopt a modified compliance standard. Upon receipt of FOTE’s notice, Held and/or Wozniak shall have the right to enforce the terms and conditions contained in the Settlement Agreement by motion or any other available remedy at law, with the sole issue to be adjudicated being the technical question of whether the NSRL would allow for a higher benzophenone content in the Products than that set forth in Section 2.1.

c. In the event that any future settlement agreement or court approved consent judgment entered into by Held and/or Wozniak involving another party, sets out a reformulation or compliance standard below that which is found in section 2.1 above, for benzophenone in substantially similar sunscreen products (e.g. a settlement covering children’s sunscreen lotion would be appropriate for comparison to children’s sunscreen lotion that is manufactured by FOTE), then upon written notice to, FOTE, the Parties shall confer and exercise reasonable efforts to consider agreement on a corresponding modification to the corresponding standard set forth in section 2.1, with regard to the Products of this Settlement Agreement.

11. DISPUTE RESOLUTION

If Held and/or Wozniak determine at a future date that a violation of this agreement has occurred, Held and/or Wozniak shall provide notice to FOTE. Prior to bringing any action to enforce any requirement of this settlement agreement, the party alleging a violation of this settlement agreement shall provide the other party with written notice of the grounds for such allegation together with all supporting information as well as a complete demand for the relief

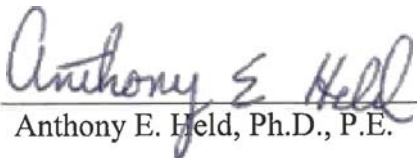
sought. The Parties shall then meet and confer regarding the basis for the allegation in an attempt to resolve the matter informally, including providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, the party alleging a violation may file its lawsuit seeking the proposed relief.

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: December 15, 2014

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

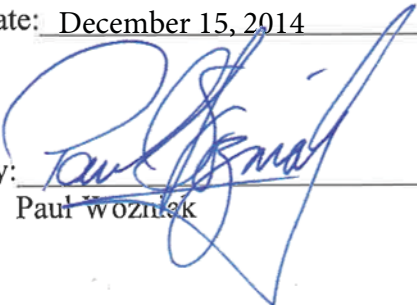
AGREED TO:

Date: DECEMBER 12, 2014

By: 
Fruit of the Earth, Inc.

AGREED TO:

Date: December 15, 2014

By: 
Paul Wozniak