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9 ANTHONY E. HELD, Ph.D., P.E.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD, Ph.D., P.E.,
14 Plaintiff,

15 v.

16 BELL AUTOMOTIVE PRODUCTS, INC., and
17 DOES 1-150, inclusive,
18 Defendants.

Case No. CIV 1106026

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Bell Automotive Products, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Dr. Held") and Bell Automotive Products, Inc. (hereinafter "Bell") with Dr. Held and
5 Bell collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Dr. Held is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Bell employs ten or more persons and is a person in the course of doing business for purposes
12 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
13 § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that Bell has manufactured, distributed, and/or sold in the State of California
16 automotive organizers and automotive seat covers containing di(2-ethylhexyl)phthalate ("DEHP").
17 DEHP is listed pursuant to Proposition 65, as a chemical known to the State of California to cause
18 birth defects and other reproductive harm. DEHP is referred to herein as the "Listed Chemical."

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: automotive
21 organizers containing DEHP that are manufactured, imported, distributed, and/or sold in California
22 by Bell, including but not limited to *Bell Glove Box Envelope, # 33207-A (#0 76027 33207 3)* and
23 automotive seat covers containing DEHP that are manufactured, imported, distributed, and/or sold in
24 California by Bell, including, but not limited to *Bell Seat Skin Universal Bucket Seat Cover, #55442-*
25 *A (#0 76027 55442 0)*. All such items shall be referred to herein as the "Products."

26 **1.6 Notices of Violation**

27 On or about June 29, 2011, Dr. Held served Bell and various public enforcement agencies
28 with a document entitled "60-Day Notice of Violation" ("Notice") that provided Bell and such public

1 enforcers with notice that Bell was alleged to be in violation of Proposition 65 for failing to warn
2 consumers that Bell's automotive organizers exposed users in California to the Listed Chemical.

3 On or about October 28, 2011, Dr. Held served Bell and various public enforcement agencies
4 with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that
5 provided Bell and such public enforcers with notice that Bell was alleged to be in violation of
6 Proposition 65 for failing to warn consumers that the Products, including the automotive seat covers,
7 exposed users in California to a Listed Chemical.

8 The Notice and Supplemental Notice are referred to collectively as the "Notices." To the best
9 of the Parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the
10 Notices.

11 **1.7 Complaint**

12 On December 12, 2011, Dr. Held, who was and is acting in the interest of the general public
13 in California, filed a complaint in the Marin County Superior Court, Case No. CIV 1106026
14 ("Complaint"), naming Bell as a defendant and alleging violations of Health & Safety Code
15 § 25249.6 by Bell based on the alleged exposures to DEHP contained in the Products offered for sale
16 in California by Bell.

17 **1.8 No Admission**

18 Bell denies the material factual and legal allegations contained in Dr. Held's Notice and
19 maintains that all products it has manufactured, imported, distributed, and/or sold in California,
20 including the Products, have been and are in compliance with all laws, including Proposition 65.
21 Nothing in this Consent Judgment shall be construed as an admission by Bell of any fact, finding,
22 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
23 construed as an admission by Bell of any fact, finding, conclusion, issue of law, or violation of law,
24 such being specifically denied by Bell. However, this section shall not diminish or otherwise affect
25 the obligations, responsibilities and duties of Bell under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Bell as to the allegations contained in the Complaint, that venue is proper in the

1 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the
5 Consent Judgment is entered by the Court.

6 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

7 **2.1 Product Warnings**

8 Commencing on the Effective Date, Bell shall not manufacture for sale in California any
9 Products unless such Products are sold or shipped with one of the clear and reasonable warnings set
10 forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the
11 reformulation standards set forth in Section 2.3.

12 Each warning shall be prominently placed with such conspicuousness as compared with other
13 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
14 individual under customary conditions before purchase or use. Each warning shall be provided in a
15 manner such that the consumer or user understands to which specific Product the warning applies, so
16 as to minimize the risk of consumer confusion.

17 **(a) Product Labeling.**

18 **(i)** Bell may affix a warning to the packaging, labeling, or directly on each
19 Product sold in California that states:

20 **WARNING:** This product contains DEHP, a phthalate
21 chemical known to the State of California to
cause birth defects and other reproductive harm.

22 **(ii)** Alternatively, when Bell believes that there may be more than one
23 Proposition 65 listed chemical in the Product, Bell may affix a warning to the packaging, labeling,
24 or directly on each Product sold in California that states:

25 **WARNING:** This product contains chemicals known to the
26 State of California to cause cancer and birth
defects or other reproductive harm.

27 **(b) Internet Sales.** In the event that Bell sells Products via the Internet to
28 customers located in California after the Effective Date that are not Reformulated Products, Bell shall

1 provide a warning for Products sold via the Internet to California residents on the website. Warnings
2 given on the website shall identify the specific Product to which the warning applies as further
3 specified in Section 2.1(b)(i).

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

12 **WARNING:** This product contains DEHP, a phthalate
13 chemical known to the State of California to
cause birth defects and other reproductive harm.

14 Alternatively, when Bell believes that there may be more than one Proposition 65 listed
15 chemical in the Product, Bell may use the following warning statement:

16 **WARNING:** This product contains chemicals known to the
17 State of California to cause cancer and birth
18 defects or other reproductive harm.

19 2.2 Exceptions To Warning Requirements

20 The warning requirements set forth in Section 2.1 shall not apply to:

- 21 (i) Any Products manufactured by Bell prior to the Effective Date; or
- 22 (ii) Reformulated Products (as defined in Section 2.3 below).

23 2.3 Reformulation Standards

24 Reformulated Products are defined as those Products containing less than or equal to 1,000
25 parts per million ("ppm") of DEHP when analyzed pursuant to EPA testing methodologies 3580A
26 and 8270C, or any method allowed by any state or federal agency to assess the DEHP content by
27 weight of a solid substance. The warnings required pursuant to Section 2.1 above shall not be
28 required for Reformulated Products.

1 **2.4 Vendor Notification Requirement**

2 To the extent it has not already done so, no more than thirty (30) days after this Consent
3 Judgment is executed by both Parties, Bell shall provide the reformulation standards specified in
4 section 2.3 for Reformulated Products to each of its vendors of Products that will be sold or offered
5 for sale to California consumers, and shall instruct each vendor to use its best efforts to provide only
6 Reformulated Products, as such Products are defined in Section 2.3.

7 **3. MONETARY PAYMENTS**

8 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

9 In settlement of all claims related to the Products and Listed Chemical referred to in the
10 Complaint, the total civil penalty assessed shall be \$8,500. Bell shall pay an initial civil penalty of
11 2,500, to be apportioned in accordance with Health & Safety Code §§ 25249.12(c)(1) & (d), with
12 75% of the penalty amount remitted to the State of California's Office of Environmental Health
13 Hazard Assessment and the remaining 25% remitted to Dr. Held.

14 Civil penalties are to be apportioned in accordance with California Health & Safety Code
15 § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
16 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% to Dr. Held.

17 Bell shall issue two separate checks for the penalty payment: (a) one check made payable to
18 "The Chanler Group in Trust for the Office of Environmental Health Hazard Assessment" in the
19 amount of \$1,875, representing 75% of the total penalty; and (b) one check to "The Chanler Group in
20 Trust for Anthony Held" in the amount of \$625, representing 25% of the total penalty.

21 Two separate 1099s shall be issued for the above-payments. The first 1099 shall be issued to
22 the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814
23 (EIN: 68-0284486) in the amount of \$1,875. The second 1099 shall be issued to Dr. Held in the
24 amount of \$625, whose address and tax identification number shall be furnished, upon request, ten
25 (10) calendar days before payment is due.

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1 Payment shall be delivered within ten (10) calendar days of the Effective Date, at the
2 following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 The second civil penalty payment of \$6,000 is due no more than thirty (30) days after the
9 Effective Date; however, this amount shall be waived in its entirety if Bell certifies (in writing to
10 Dr. Held's counsel no more than fifteen (15) days after the Effective Date) that all Products that it
11 has manufactured for sale in California as of the Effective Date constitute Reformulated Products
12 pursuant to Section 2.3 above. If the certification is not received, then the second civil penalty
13 amount shall be apportioned in the same manner outlined above and delivered to Dr. Held's counsel
14 at the above address.

15 **4. REIMBURSEMENT OF FEES AND COSTS**

16 **4.1 Attorney's Fees and Costs**

17 The Parties reached an accord on the compensation due to Dr. Held and his counsel under
18 general contract principles and the private attorney general doctrine codified at California Code of
19 Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles,
20 Bell shall pay the total of \$37,000 for fees and costs incurred as a result of investigating, bringing this
21 matter to the attention of Bell, and negotiating a settlement in the public interest. Bell shall issue a
22 separate check payable to "The Chanler Group," issue a separate 1099 for fees and costs (EIN: 94-
23 3171522), and deliver payment within ten (10) calendar days of the Effective Date, to the following
24 address.

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710

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1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Dr. Held's Release of Bell**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, acting on his own behalf and in
5 the public interest releases Bell and its subsidiaries and affiliates, and each of its downstream
6 customers, distributors, wholesalers, retailers, licensors, and licensees, and the officers, directors,
7 managers, employees, members, shareholders, agents, insurers and representatives of each of them
8 (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective
9 Date based on exposure to the Listed Chemical from the Products as set forth in the Notices:

10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
11 65 with respect to exposures to the Listed Chemical from the Products as set forth in the Notices.

12 **5.2 Dr. Held's Individual Release of Claims**

13 Dr. Held also, in his individual capacity only and *not* in his representative capacity, provides a
14 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
15 actions, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
16 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
17 suspected or unsuspected, against Bell and Releasees, arising out of alleged or actual exposures to
18 DEHP in the Products manufactured, distributed or sold by Bell.

19 **5.3 Bell's Release of Dr. Held**

20 Bell waives any and all claims against Dr. Held, his attorneys and other representatives, for
21 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
22 Held and his attorneys and other representatives, whether in the course of investigating claims or
23 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
24 Products.

25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and shall
27 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
28 has been fully executed by all parties.

1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining shall not be adversely affected.

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Products and/or the Listed Chemical,
9 then Bell shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
10 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Products are so affected.

12 **9. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to
14 this Consent Judgment shall be in writing and personally delivered or sent by: (i) personal delivery;
15 (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any
16 party by the other party at the following addresses:

17 For Bell:

18 Kwai Kong, CEO
19 Bell Automotive Products, Inc.
20 18940 North Pima Road, Suite 200
21 Scottsdale, AZ 85255

22 With a copy to:

23 Peg Carew Toledo
24 MENNEMEIER, GLASSMAN & STROUD LLP
25 980 9th Street, Suite 1700
26 Sacramento, CA 95814

27 For Dr. Held:

28 Proposition 65 Coordinator
29 THE CHANLER GROUP
30 2560 Ninth Street
31 Parker Plaza, Suite 214
32 Berkeley, CA 94710

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
5 be deemed an original, and all of which, when taken together, shall constitute one and the same
6 document.

7 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Dr. Held agrees to comply with the reporting form requirements referenced in California
9 Health & Safety Code § 25249.7(f).

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
13 approval, Dr. Held and Bell and their respective counsel agree to mutually employ their best efforts
14 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
15 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
16 at a minimum, cooperating on the drafting and filing of any papers in support of the required motion
17 for judicial approval.

18 **13. MODIFICATION**

19 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
20 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
21 any party and entry of a modified consent judgment by the Court.

22 **14. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
24 parties and have read, understood, and agree to all of the terms and conditions hereof.
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AGREED TO:

APPROVED

Date: By Anthony Held at 11:05 am, Jan 31, 2012

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

AGREED TO:

Date: January 19, 2012

By: Kwai Kong
Kwai Kong, CEO
BELL AUTOMOTIVE PRODUCTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT