

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and The B & F System, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and The B & F System, Inc. (“B & F”), with Held and B & F collectively referred to as the “Parties.” 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. Held alleges that B & F 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 §§ 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that B & F has manufactured, imported, sold and/or distributed for sale in California pliers and booster cables with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”) and shot glasses with exterior designs containing lead, without the requisite Proposition 65 health hazard warnings. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are: (a) pliers with vinyl/PVC grips containing DEHP including, but not limited to, the *Shakespeare 9 Piece Fish Fillet Set, (Pliers), Item #S0FISH, #04094546, UPC #0 24409 95470 2* and the *MAXAM Fisherman’s Set (Pliers), #03492279, Item #SKFISHER, UPC #0 24409 13078 6*; (b) booster cables with vinyl/PVC grips containing DEHP including, but not limited to, the *MAXAM 24 pieces Auto Safety Kit (Booster Cable), Item #AUHEK24, UPC #0 24409 99502 6*; and (c) Shot Glasses with Exterior Designs containing lead including, but not limited to, the *6pc Shot Glass*

Set, Item #SPSHOT, UPC #0 24409 47950 2 that are manufactured, imported, sold and/or distributed for sale in California by B & F (collectively hereinafter the “Products”).

1.4 Notices of Violation

On August 16, 2013, Held served B & F and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on B & F’s alleged failure to warn its customers, consumers, workers and other individuals that its pliers with vinyl/PVC grips including, but not limited to, the *Shakespeare 9 Piece Fish Fillet Set, (Pliers), Item #S0FISH, #04094546, UPC #0 24409 95470 2* exposed users in California to DEHP.

On February 7, 2014, Held served B & F and certain requisite public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on B & F’s alleged failure to warn its customers, consumers, workers and other individuals that the Products exposed users in California to DEHP and lead, as specified in the Supplemental Notice. The Notice and Supplemental Notice shall collectively be referred to hereinafter as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

B & F denies the material factual and legal allegations contained in Held’s Notices and maintains that all products that it has manufactured, imported, distributed, and/or sold 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 B & F of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by B & F of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect B & F’s obligations, responsibilities and duties under this Settlement Agreement.

1.6 Definitions

1.6.1 The term “Effective Date” shall mean March 21, 2015.

1.6.2 The term “exterior decorations” means all colored artwork, designs and markings on the exterior surface of the shot glass Products.

1.6.3 The term “Lip and Rim Area” means the exterior top 20 millimeters of the shot glass Products as defined by American Society of Testing and Materials Standard Test Method C927-99.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Standards

2.1.1 Pliers and Booster Cables With Vinyl/PVC Grips: Plier and booster cable Products with vinyl pvc/grips shall qualify as Reformulated Products if the vinyl/pvc grips do not contain DEHP in concentrations that exceed 0.1 percent (1,000 parts per million).

2.1.2 Shot Glasses With Exterior Decorations: Shot glass Products with exterior decorations shall qualify as Reformulated Products if they satisfy the standards set forth in Section 2.1.2 (a) and Section 2.1.2(b). Shot glass Products with exterior decorations that extend into the Lip and Rim Area must also satisfy Section 2.1.2(c) to qualify as Reformulated Products.

2.1.2(a) Decorating Material Content Based Standard: The exterior decoration material shall not contain more than 0.01% (100 parts per million) of lead by weight when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B, 6010B or any other methodology utilized by federal or state agencies for the purpose of determining the lead content in a solid substance.

2.1.2(b) Wipe Test Based Standard: The exterior decoration material shall not exceed 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100 as applied to the exterior decorations.

2.1.2(c) Lip and Rim Decorations: For shot glass Products with exterior decorations that extend into the Lip and Rim Area, the exterior decoration material shall not

contain more than 0.5 (ug/ml) of lead when analyzed pursuant to ASTM C927-80 or an equivalent test methodology utilized by federal or state agencies for the purpose of determining the lead content on a glass vessel.

2.2 Reformulation or Warning Commitment

As of the Effective Date, all Products manufactured, imported, distributed, sold and/or offered for sale by B & F in the State of California shall be Reformulated Products, defined in Section 2.1 above, or shall carry Proposition 65 health hazard warnings pursuant to Section 2.3 below.

2.3 Product Warnings

Commencing on the Effective Date, for all Products other than Reformulated Products that B & F distributes for sale in California, B & F shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b). Each warning, modified to reflect the presence of DEHP and/or lead as appropriate, 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. B & F represents that it has already instituted a health-hazard warning program for the Products and, as such, all Products currently already containing an existing Proposition 65 Warning need not be re-labeled to conform to Section 2.3. However, any Products not yet in B & F's inventory or that do not contain an existing Proposition 65 Warning, shall comply with the warning requirements of this Section.

(a) **Retail Store Sales.**

(i) **Product Labeling.** A warning affixed to the packaging, labeling, or directly on each Product sold in retail outlets in California that states:

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

or

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

(ii) **Point-of-Sale Warnings.** Alternatively, B & F 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 B & F's customers shall be sent by certified mail, return receipt requested.

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

or

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

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

WARNING: The following products contain [lead] [DEHP], a chemical known to the State of California to cause birth defects and other reproductive harm:
[list products for which warning is required]

² For 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.

or

WARNING: The following products contain a chemical [chemicals] that is [are] known to the State of California to cause cancer and birth defects or other reproductive harm.

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that B & F sells Products via mail order catalog and/or the internet, to customers with California addresses, after the Effective Date, that are not Reformulated Products, a Section 2.3(a)(1) warning shall be included at B & F's sole option either: (a) in the mail order catalog (if any) in accordance with Section 2.3(b)(i) and on the website (if any) in accordance with Section 2.3(b)(ii), or (b) with the Product when it is shipped to an address in California pursuant to Section 2.3(b)(iii). .

(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 [lead] [DEHP], a chemical known to the State of California to cause birth defects and other reproductive harm.

or

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

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, B & F 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 [lead] [DEHP], a chemical known to the State of California to cause birth defects and other reproductive harm.

or

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain a chemical [chemicals] that is [are] known to the State of California to cause cancer and birth defects or other reproductive harm.

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, B & F 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 [lead] [DEHP], a chemical known to the State of California to cause birth defects and other reproductive harm.

or

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

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: Products identified on this page with the following symbol ▼ contain [lead] [DEHP], a chemical known to the State of California to cause birth defects and other reproductive harm.

or

WARNING: Products identified on this page with the following symbol ▼ contain a chemical [chemicals] that is [are] known to the State of California to cause cancer and birth defects or other reproductive harm.

(iii) Package Insert or Label. Alternatively, a warning for mail order and internet sales may be provided with the Product when it is shipped directly to a consumer with a California address, either by: (i) product labeling pursuant to Section 2.3(a)(1) or (ii) inserting a card or slip of paper measuring at least 4" by 6" in the shipping carton. The warning shall include the language appearing in Section 2.3(a)(1) and shall inform the consumer that he or she may return the Product for a full refund, including the cost to ship the item back to B & F at B & F's sole expense, within 30 days of receipt.

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement, B & F has been assessed a civil penalty in the amount of \$16,000 to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Held. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.1.1 Initial Civil Penalty

On or before the Effective Date, B & F shall pay an initial civil penalty in the amount of \$4,000. B & F shall issue a check to “Anthony E. Held, Client Trust Account.” The initial penalty payment shall be delivered to the addresses listed in Section 3.3 below.

3.1.2 Final Civil Penalty

On or before September 30, 2015, B & F shall pay a final civil penalty in the amount of \$12,000. The final civil penalty shall be waived in its entirety, however, if an Officer of B & F provides Held with written certification that as of the date of such certification and continuing into the future, all Products manufactured or imported and to be offered for sale in California by B & F are Reformulated Products. Held must receive any such certification on or before September 15, 2015, and time is of the essence. Unless waived, the final civil penalty shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) & (d), with 75% of these funds remitted to OEHHA by Held, as provided by California Health & Safety Code § 25249.12(d). Unless waived, B & F shall provide its payment in a check to “Anthony E. Held, Client Trust Account” in the amount of \$12,000.

3.2 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, B & F expressed a desire to resolve the fee and cost issue. 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 section 1021.5 for all work performed through the mutual execution of this agreement. B & F shall pay \$29,500 for fees and costs incurred as a result of investigating, bringing this matter to B & F’s attention, and negotiating a settlement in the public interest. B & F 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 below.

3.3 Payment Procedures

All payments owed to Held and his counsel, pursuant to Sections 3.1 and 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

4. CLAIMS COVERED AND RELEASED

4.1 Held’s Release of B & F

This Settlement Agreement is a full, final and binding resolution between Held and B & F of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself his past and current agents, representatives, attorneys, successors and/or assignees, against B & F, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom B & F directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP and lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by B & F in California before the Effective Date. This release is provided in Held’s individual capacity and is not a release on behalf of the public.

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 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, but not limited to, investigation fees, expert fees

and attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP and lead in the Products manufactured, imported distributed, sold and/or offered for sale by B & F before the Effective Date (collectively "claims"), against B & F and Releasees.

4.2 B & F's Release of Held

B & F, on behalf of itself, 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.

5. SEVERABILITY

If any of the provisions of this Settlement Agreement are held 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. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are 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 B & F shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve B & F from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

7. 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) overnight courier to any party by the other party at the following addresses:

To Defendant The B & F System, Inc.:

John Meyer, President
The B & F System, Inc.
3920 South Walton Walker Boulevard
Dallas, TX 75236

To Plaintiff Anthony E. Held, Ph.D., P.E.:

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. A facsimile or pdf signature shall be as valid as the original.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

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

11. AUTHORIZATION

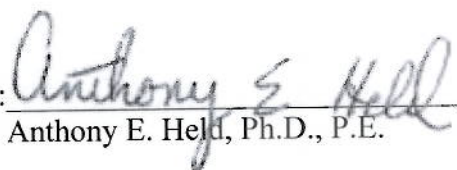
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

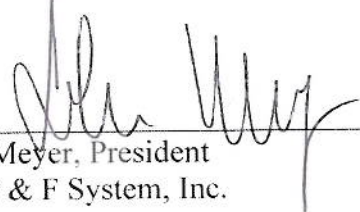
AGREED TO:

AGREED TO:

Date: March 16, 2015

Date: 3-17-15

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

By: 
John Meyer, President
The B & F System, Inc.