

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 Jasco Products Company LLC (“Jasco”), with Held and Jasco each referred to individually as a “Party” and collectively 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. Jasco 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Held alleges that Jasco has manufactured, imported, distributed, sold and/or offered for sale in the State of California vinyl/PVC electrical tape containing di(2-ethylhexyl)phthalate (“DEHP”). 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 defined as vinyl/PVC electrical tape including, but not limited to, *GE Electrical Tape 3/4” Width, 60 ft., #18160, UPC #043180 18160 2*, manufactured, imported, distributed, sold and/or offered for sale by Jasco in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On November 25, 2014, Held served Jasco and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Jasco was in violation of Health & Safety Code § 25249.6 for failing to warn consumers that its Products exposed users in the State of California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

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1.5 No Admission

Jasco denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has 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 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 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Jasco. This section shall not, however, diminish or otherwise affect Jasco'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 the date the Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING

Commencing on the Effective Date, Jasco shall only sell, ship or offer for sale in California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.1; or (2) exempt pursuant to Section 2.2 as Reformulated Products as defined in Section 2.3.

2.1 Product Warnings

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(s) the warning applies, so as to minimize the risk of consumer confusion. Jasco shall affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in the State of California that states:

WARNING: This product contains DEHP, a chemical 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.

or

WARNING: This product will expose you to DEHP, a chemical 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.¹



or

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.)

2.2 Exceptions to Warning Requirements


The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as Products containing concentrations of less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”) and Diisononyl phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP, DBP, BBP and/or DINP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Jasco by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Jasco under laws other than Proposition 65.

2.4 Vendor Notification Requirement

To the extent it has not already done so, no more than ten (10) days after the Effective Date, Jasco shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its vendors of Products and of accessible component parts used in the Products that

¹ The diamond shaped border in the standard (Globally Harmonized System) pictogram “” for toxic hazards is to appear in the color red. The word “WARNING” shall be written in all capital letters, in bold print no smaller than 10 point type; the remainder of the warning language shall be written in 8 point type font or larger. Jasco may enclose the text of the warning message in a box. Where the exposure is to a phthalate chemical other than DEHP, Jasco may replace the term DEHP in the warning with the name of the other phthalate chemical such as DBP, BBP and/or DINP.

will be sold or offered for sale to California consumers, and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as defined in Section 2.3.

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, Jasco shall pay a total of \$30,000 in civil penalties in accordance with this Section. Held will allocate each penalty payment 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 retained by Held. Within five (5) days of the Effective Date, Jasco shall deliver a check in the amount of \$30,000 made payable to “Anthony Held, Client Trust Account” to the address listed in Section 3.3 below.

3.2 Reimbursement of Held’s 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Jasco expressed a desire to resolve the fee and costs issue. The Parties then attempted to (and did) reach an accord on the compensation due 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 in this matter. Under these legal principles, Jasco shall pay \$32,000 for fees and costs incurred investigating and enforcing this matter, including the fees and costs incurred (and to be incurred) drafting, negotiating, and obtaining this Settlement Agreement in the public interest.

3.3 Payment Procedures

All payments owed to Plaintiff 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 Proposition 65 Claims

Held, acting on his own behalf, and *not* in his representative capacity, releases Jasco and each entity to whom Jasco directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees, licensors and retailers ("Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposures to DEHP from 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 sold by Jasco before the Effective Date as set forth in the Notice.

Held, in his individual capacity only, and *not* in his representative capacity, also provides a release 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 Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, DBP, BBP and DINP in the Products imported, manufactured, sold or distributed for sale by Jasco and Releasees before the Effective Date.

4.2 Jasco's Release of Held

Jasco on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held, 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. 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 Jasco 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 Jasco from any obligation to comply with any pertinent state or federal toxics control law.

6. NOTICES

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 Jasco:

David Stewart
General Counsel, VP Legal Affairs
Jasco Products Company LLC
10 E. Memorial Road, Bldg. B
Oklahoma City, OK 73114

For 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.

7. COUNTERPARTS; FACSIMILE 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.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

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

10. **MODIFICATION**

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

11. **AUTHORIZATION**

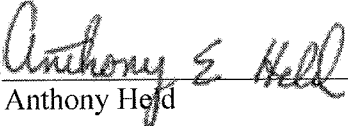
The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 6/15/2015

Date: _____

By: 
Anthony Held

By: _____
David Stewart
General Counsel, VP Legal Affairs
Jasco Products Company LLC

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General Counsel, VP Legal Affairs
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