

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 Tender Corporation (“Tender”), with Held and Tender each individually referred to as a “Party” and collectively as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Tender Corporation is a Delaware Corporation with a principal place of business at 106 Burndy Road, Town of Littleton, County of Grafton and State of New Hampshire. Held alleges that Tender 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 Tender manufactures, sells, and/or distributes for sale in California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Held alleges that Tender failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DINP from its vinyl/PVC gloves. Tender denies all allegations.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl/PVC gloves containing DINP including, but not limited to, the *Genuine First Aid Vinyl Gloves, VG-1, UPC #0 83491 34127 2*, as well as any *Genuine First Aid* gloves as may be contained within First Aid Kits as well as First Aid Kit “refill” and individual gloves, manufactured, sold or distributed for sale in California by Tender (“Products”).

1.4 Notice of Violation

On or about April 24, 2015, Held served Tender, others, and certain requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Tender violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to DINP. 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

Tender denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Tender 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 Tender of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tender. However, this Section shall not diminish or otherwise affect Tender'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 September 11, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Tender agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." Tender represents that after receiving the Notice, it reformulated its Products, and shall hereafter only manufacture and sell Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DINP 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, the Consumer Product Safety Commission's (CPSC) method for testing phthalates i.e., CPSC-CH-C1001-09.3, or other methodology utilized by federal or state government agencies for the purpose of determining DINP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, Tender agrees to pay \$6,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Held. Held and his counsel will deliver the appropriate 75% portion of all civil penalties paid to OEHHA. On or before September 18, 2015, Tender shall pay an initial civil penalty in the amount of \$6,000. Tender will provide its payment in a check made payable to "Anthony E. Held, Ph.D., P.E., Client Trust Account."

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to Held and his 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, Tender agrees to pay \$23,000 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Tender's management, and negotiating a settlement in the public interest. Tender's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

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 Held's Release of Tender

This Settlement Agreement is a full, final and binding resolution between Held, as an individual and *not* on behalf of the public, and Tender, of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against Tender, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Tender directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DINP contained in Products manufactured, distributed, sold or offered for sale by Tender in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not

exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposures to DINP in Products manufactured, distributed, sold and/or offered for sale by Tender before the date that this Settlement Agreement is fully executed by the Parties.

4.2 Tender's Release of Held

Tender, on its own behalf, and on behalf of 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.

4.3 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Tender under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Tender's intent by entering into this Agreement that to the extent any other private party initiates an action against Tender alleging a violation of Proposition 65 with respect to failure to provide a warning concerning exposure to DINP from Products manufactured, distributed, sold or offered for sale by Tender in California before the Effective Date, and subject to Tender's compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products addressed under this Agreement.

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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 otherwise rendered inapplicable by reason of law generally, as to Tender specifically as a result of a statutory exemption, or as to the Products, then Tender may provide written notice to Held of any asserted change in the law, or its applicability to Tender or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Tender or the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Tender:

Jason Cartwright, Chief Executive Officer
Tender Corporation
106 Burndy Road
Littleton, NH 03561

For Held:

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

Any Party may, from time to time, specify in writing to the other 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. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and 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:

Date: 9/14/2015

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

AGREED TO:

Date: 9/11/15

By: Jason R. Cartwright
Jason Cartwright, Chief Executive Officer
Tender Corporation