

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Tender Corporation

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Tender Corporation, in its own right and d/b/a Adventure Medical Kits (“Tender”), with Held and Tender collectively referred to 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. Tender employs ten or more persons and is a person in the course of doing business for purposes of 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 Tender has manufactured, imported, distributed, sold and/or offered for sale in the State of California first aid cases 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 first aid cases, including survival kits and supplies and the packaging thereof, containing DEHP including, but not limited to, *Waterproof C.P.R Medic (#7 07708 00673 9)* and *Waterproof Pocket Medic (#7 7708 00145 1)*), manufactured, imported, distributed, sold and/or offered for sale by Tender in the State of California, hereinafter “Products.”

1.4 Notice of Violation

On April 5, 2012 and July 11, 2012, Held served Tender and various public enforcement agencies with documents titled “60-Day Notice of Violation” that provided the recipients with notice alleging that Tender was in violation of California Health & Safety Code § 25249.6 for

failing to warn consumers that its Products exposed users in California to DEHP (the “Notices”). No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Tender denies the material, factual and legal allegations contained in the Notices and maintains that all 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, 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. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Tender under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 1, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standard

“DEHP Free” Products shall mean Products containing less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C or other testing methodology used by state or federal government agencies in determining DEHP content in consumer products.

2.2 Reformulation Commitment

As of the Effective Date, the *Waterproof Pocket Medic* (#7 7708 00145 1) manufactured, imported, distributed and/or shipped by Tender shall qualify as “DEHP Free” as defined in Section 2.1 above. As of December 31, 2013, all other Products manufactured or caused to be manufactured, imported, or distributed and shipped by Tender for sale in the State of California by Tender shall be Products that qualify as “DEHP Free” Products as defined in Section 2.1 above.

2.3 Product Warnings

Commencing on the Effective Date, for all Products other than “DEHP Free” Products, Tender shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b). 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.** Tender 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 a chemical known to the State of California to cause birth defects and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, Tender 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 Tender’s customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains a chemical known to the State of California to cause birth defects and 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.*, “DEHP Free” Products as defined in Section 2.1), the following statement shall be used:

WARNING: The following products contain a chemical known to the State of California to cause birth defects and other reproductive harm:

[list products for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that Tender sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not “DEHP Free” Products, Tender 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 a chemical known to the State of California to cause birth defects and 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, Tender 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 known to the State of California to cause birth defects and 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, Tender 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 a chemical known to the State of California to cause birth defects and 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: This product contains a chemical known to the State of California to cause birth defects and other reproductive harm.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

Pursuant to Health & Safety Code § 25249.7(b), Tender shall pay civil penalties in the amount of \$10,000 as set forth in Sections 3.1 and 3.2 below.

3.1 Initial Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Tender shall pay an initial civil penalty of \$2,000. The initial civil penalty is to be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHHA") and the remaining 25% of the penalty remitted to Held. Tender shall issue two separate checks for the penalty payment: (a) one check made payable to The Chanler Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("The Chanler Group in Trust for OEHHHA") in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Held" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be

issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and the second 1099 shall be issued to Held, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before the Effective Date to the following address:

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

3.2 Final Civil Penalty

Tender shall pay a second and final civil penalty of \$8,000 on December 31, 2013. However, the final civil penalty shall be waived in its entirety if an officer of Tender certifies in writing that, as of December 31, 2013, it will sell, ship and offer for sale in California only “DEHP Free” Products. Such certification must be received by The Chanler Group on or before December 15, 2013. The final civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Held. Tender shall issue two separate checks for the final civil penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the amount of \$6,000, representing 75% of the total penalty; and (b) one check to “The Chanler Group in Trust for Held” in the amount of \$2,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Held, whose information shall be provided five calendar days before the payment is due (if different than the information already provided to Tender under Section 3.1 above). Payment shall be delivered to Held’s counsel at the following address:

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

4. 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 issue to be resolved after the material terms of the agreement had been settled. Held then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. Tender shall pay \$18,750 for fees and costs incurred as a result of investigating, bringing this matter to Tender's attention, and negotiating a settlement in the public interest. Tender shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before the Effective Date to the following address:

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

5. RELEASES

5.1 Held's Release of Tender

This Settlement Agreement is a full, final and binding resolution between Held and Tender 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 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 and licensees ("Releasees"), based on their failure to

warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Tender in California before the Effective Date.

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 his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Held 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 in the Products manufactured, distributed, sold and/or offered for sale by Tender before the Effective Date (collectively "claims"), against Tender and Releasees.

5.2 Tender's Release of Held

Tender 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.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Tender may ask Held, in writing, to file a complaint on behalf of the public interest to incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Held agrees to reasonably cooperate with Tender and the parties shall use their best efforts to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Tender will

reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$16,000, exclusive of fees and cost that may be incurred on appeal. Tender will remit payment to The Chanler Group, at the address set forth in Section 4. Such additional fees shall be paid by Tender within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

7. 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.

8. 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 Tender 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 Tender from any obligation to comply with any pertinent state or federal toxics control law.

9. 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 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, 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.

10. 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.

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

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

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12. MODIFICATION

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

13. AUTHORIZATION

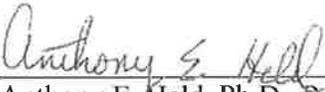
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: October 26, 2012

Date: _____

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

By: _____
Jason Cartwright, Chief Executive Officer
Tender Corporation

12. **MODIFICATION**

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

13. **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: _____

Date: 10/29/2012

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

By: 
Jason Cartwright, Chief Executive Officer
Tender Corporation