

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and Mahar Manufacturing Corp.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Held") and Mahar Manufacturing Corp. dba Fiesta Toys (hereinafter "Mahar"), with Held and Mahar 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. Mahar employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.2 General Allegations

Held alleges that Mahar has manufactured, distributed and/or sold in the State of California children's bags with vinyl components containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP is referred to herein as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: products with vinyl components containing the Listed Chemical including, but not limited to, 8"

6 Asst. Clown Fish Purses, Item # A04793 (#0 91671 70479 3); 4" 6 Asst. Butterfly Item # A04427 (#0 91671 70442 7); and 11" X'mas Penguin, #X08503 (0 91671 60850 3). All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about February 24, 2009, Held served Mahar, Fiesta Concession Corp, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Mahar and such public enforcers with notice that alleged that Mahar was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Mahar denies the material factual and legal allegations contained in Held's Notice 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 Mahar 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 Mahar of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Mahar. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Mahar under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 20, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Mahar shall only manufacture or cause to be manufactured, Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Settlement Agreement, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

Mahar hereby commits that 50% of the Products that it offers for sale in California after the Effective Date shall be Phthalate Free or otherwise be exempt from the warning requirements as set forth in Section 2.5. Mahar further commits that 100% of the Products that it offers for sale in California after August 31, 2009 shall be Phthalate Free.

2.2 Product Warnings After the Effective Date, Mahar shall not sell, ship, or offer to be shipped for sale in California, Products containing the Listed Chemical unless such Products are shipped with the clear and reasonable warnings set out in Sections 2.3 and 2.4 or comply with the reformulation requirements of Phthalate Free Products set out in Section 2.1.

Any warning issued for Products pursuant to Sections 2.3 and 2.4, below, 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, for Products shipped directly to an individual in California, before use.

2.3 Warnings For Retail Store Sales

(a) **Product Labeling.** Mahar may perform its warning obligation for any Product which requires a warning, by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold in retail outlets in California by Mahar or its agents, that states:

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

(b) **Point-of-Sale Warnings.** Mahar may perform its warning obligations for any Product which requires a warning by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that state:

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

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

¹ For purposes of this Settlement Agreement, "sold in proximity to other like items" shall mean that the

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

[list products for which warning is required]

2.4 Warnings For Mail Order Catalog and Internet Sales.

Mahar shall satisfy its warning obligations for Products requiring a warning sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in subsections (a) and (b) below.

(a) Mail Order Catalog Warning. Any warning provided in a mail order catalog must 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 each display of the Product:

WARNING: This product contains DEHP, a phthalate 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 of the Product, the Mahar 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 and on the same page as any

Product and another product are offered for sale close enough to each other so that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

order form for the Product(s):

WARNING: Certain products identified with this symbol ▲ and offered for sale in this catalog contain DEHP, a phthalate 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 or description of the Product on such page. On each page where the designated symbol appears, Mahar must provide a reference directing the consumer to the warning language and definition of the designated symbol.

If Mahar elects to sell one or more Products requiring a warning to consumers via mail order catalog after the Effective Date, then the warnings must be included in all catalogs containing the Products which are distributed in California as of the Effective Date.

(b) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Product to a California consumer via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the 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 DEHP, a phthalate 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: Products identified on this page with the following symbol ▲ contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

2.5 Exceptions To Warning Requirements

The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- (i) Any Products received by Mahar prior to receipt of the Notice, provided that Mahar does not have actual knowledge, or reason from communications with its suppliers of the Products to believe, that the Listed Chemical is present in such Products in concentrations exceeding 1,000 ppm each; or
- (ii) Any Products which were delivered by Mahar to customers prior to receipt of this Notice where, prior to the Effective Date of this Agreement, Mahar sent notices to such customers informing them that such products may contain phthalates, including DEHP, and advising them to stop selling the products; or
- (iii) Phthalate Free Products (as defined in Section 2.1).

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

In settlement of all the claims referred to in this Settlement Agreement against it, Mahar shall pay \$2,000 in civil penalties to be apportioned in accordance with

California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Held as provided by California Health & Safety Code §25249.12(d). Mahar shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for OEIHA") in the amount of \$1,500, representing 75% of the total penalty and (b) one check to "Hirst & Chanler LLP in Trust for Anthony 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 OEIHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued to Held in the amount of \$500, 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 ten days after the Effective Date, at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Mahar shall reimburse Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to Mahar's attention, and negotiating a settlement in the public interest.

Mahar shall pay Held and his counsel \$16,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on or before ten days after the Effective Date, at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Mahar shall issue a separate 1099 for fees and cost paid in the amount of \$16,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Mahar and Downstream Customers

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, Hirst & Chanler, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Mahar and each of its

downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Mahar Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Mahar's alleged failure to warn about exposures to or identification of DEHP contained in the Products.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys, including, without limitation, Hirst & Chanler, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Mahar and each of its Releasees. This additional release, which Held is providing in his individual capacity, is limited to those Claims that arise with respect to Proposition 65, such as Claims that relate to Mahar's alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in any products sold by Mahar

Held agrees that he will not bring any further claims against the Mahar Releasees for Mahar Products without first complying with section 8 below.

5.2 Mahar's Release of Held

Mahar 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to

the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement, other than Section 5.1, are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected to the extent such remaining provisions can be given effect without the unenforceable provision or application.

7. 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 or the MADL is repealed modified or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then the Mahar Releasees shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. For children's toys and childcare articles, if the state or California or Federal government raises the DEHP content level from its current 1,000 ppm standard, then the definition of phthalate free in this agreement shall be modified to be consistent with the new federal or state level.

8. RIGHT TO CURE

Held and Whitney R. Leeman ("Leeman") agree not to issue a 60 Day Notice of Violation against any Mahar and its Releasees pertaining to the sale of Mahar Products without first providing written notice of the alleged occurrence of any violation of Proposition 65 after the Effective Date.

In the event that Held or Leeman finds any products being sold by any Mahar Releasees in alleged violation of Proposition 65 or the terms of this Agreement in the future, he/she shall notify Mahar in writing as required by section 9 below. Upon receipt of the notification, Mahar shall have thirty (30) days to cure the alleged violation by either providing a compliant warning for products to be sold after the thirty (30) day period expires, ceasing to sell the product in California within that period, or providing evidence that the Mahar is in compliance with Proposition 65 or that Proposition 65 is otherwise inapplicable ("Cure"). Within this thirty day period, Mahar shall notify Held or Leeman in writing as required by section 9 below, what measures it has undertaken to Cure the alleged violation. If Mahar Cures the alleged violation within the 30-day period, then Held a shall not bring any Proposition 65 claim against the Mahar Releasee with regard to the products which were the subject of the notice and Cure, including, without limitation, any products that were sold without a required warning before the thirty (30) day period expired. If Held or Leeman reasonably does not believe that Mahar has Cured the alleged violation, he shall contact Mahar in writing and the parties shall mediate their differences in good faith, before AAA or JAMS in Los Angeles at Mahar's option, for a period not to exceed 90 days after Held or Leeman contacts Mahar asserting the lack of a Cure. The non-prevailing party in the mediation shall bear the costs of the mediation and shall reimburse the prevailing party for its attorneys fees and costs.

If Mahar elects to not respond to Held's or Leeman's notice in accordance with the terms of this section, on the thirty-first (31st) day following the receipt of the written notice, Held or Leeman can issue a 60 Day Notice of Violation and commence full proceedings against Mahar as

provided under Proposition 65.

9. NOTICES

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

For Mahar:
Michael Lauber, President
Mahar Manufacturing Corp.
2834 East 46th Street
Vernon, CA 90058

With copies to:

Albert M. Cohen, Esq.
Loeb & Loeb, LLP
10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067

For Held and Leeman:

Proposition 65 Coordinator
Hirst & Chanler, LLP
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 SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, 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 form requirements referenced in Health & Safety Code §25249.7(f).

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 on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p>APPROVED By Anthony E Held at 12:34 pm, 7/29/09</p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> Anthony Held</p>	<p>AGREED TO:</p> <p>Date: <u>7/23/09</u></p> <p>By: <u>Wade Laska</u> Mahar Manufacturing Corp.</p>
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