

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held And Peachtree Playthings, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter "Held") and Peachtree Playthings, Inc., (hereafter "Peachtree"), with Held and Peachtree 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. Peachtree 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 Peachtree has manufactured, distributed and/or sold in the State of California sporting toys/children's items containing di(2ethylhexyl)phthalate including, but not limited to, *Junior Sport Sure Catch Baseball and Glove* (#7 24328 30011 5). The chemical, di(2ethylhexyl)phthalate, 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. Di(2ethylhexyl)phthalate shall be referred to herein as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows:
sporting toys/children's items containing di(2ethylhexyl)phthalate including, but not limited to,

the products identified in Exhibit A to this Settlement Agreement. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about January 11, 2008, Held served Peachtree and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Peachtree and such public enforcers with notice that alleged that Peachtree was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that Peachtree sold exposed users in California to the Listed Chemical.

1.5 No Admission

Peachtree 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 Peachtree 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 Peachtree of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Peachtree. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Peachtree under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 15, 2008.

2. INJUNCTIVE RELIEF: REFORMULATION

As of the Effective Date, Defendant 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"), which equates to 0.1%, of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

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

In settlement of all the claims referred to in this Settlement Agreement, Peachtree shall pay \$2,400 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). Peachtree shall issue two separate checks, on or before August 20, 2008, 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 (OEHHA) in the amount of \$1,800, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$600, 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) in the amount of \$1,800. The second 1099 shall be issued to Held in the amount of \$600, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

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 Peachtree shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Peachtree attention, and negotiating a settlement in the public interest. Peachtree shall pay Held and his counsel \$19,600 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to Hirst & Chanler, LLP and shall be delivered on or before August 20, 2008, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Peachtree shall issue a separate 1099 for fees and cost paid in the amount of \$19,600 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Peachtree 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, 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 Peachtree and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Kmart Corporation), 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 "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Peachtree's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products. Within two (2) business days of the Effective Date, Held shall cause the Complaint he filed against Kmart Corporation in Sacramento Superior Court on or about May 28, 2008 (Case Number 34-2008-00007112-CU-MC-GDS) to be dismissed without prejudice.

The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Peachtree.

5.2 Peachtree's Release of Held

Peachtree 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 are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. ATTORNEYS' FEES

In the event that, after the execution of this settlement agreement: (1) a dispute arises between the parties with respect to any provision of this Settlement Agreement; (2) Peachtree, the Attorney General or The State of California seeks modification of this Settlement Agreement pursuant to Section 12 below; or (3) Peachtree fails to comply with the terms of the Settlement Agreement and Held takes reasonable and necessary steps to enforce the terms of this Settlement Agreement, Held shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

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 as to the Products, then Peachtree 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.

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:

To Peachtree:

Doug Brucki, Chief Financial Officer
Peachtree Playthings, Inc.
601 Woodlawn Drive NE, Bldg. 200
Marietta, GA 30067

To Held:

Proposition 65 Controller
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.

AGREED TO:	AGREED TO:
Date: APPROVED By Anthony E Held at 8:54 am, 8/18/08	Date: <u>Aug. 20, 2008</u>
By: <u>Anthony E. Held</u> Anthony Held	By: <u>Mark Tasman</u> Mark Tasman, President, Peachtree Playthings, Inc.

EXHIBIT A

The Products covered by this Settlement Agreement are Sporting Toys/Children's Items containing Di(2-ethylhexyl) phthalate including, but not limited to, the *Junior Sport Sure Catch Baseball and Glove* (#7 24328 30011 5).