

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and American Greetings Corporation

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Dr. Held") and American Greetings Corporation (hereinafter "American Greetings"), with Dr. Held and American Greetings collectively referred to as the "Parties." Dr. 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. American Greetings 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.* (hereinafter "Proposition 65").

1.2 General Allegations

Dr. Held alleges that American Greetings manufactured, distributed and/or sold sporting toys/children's items containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the requisite health hazard warnings. DEHP is known to cause birth defects and other reproductive harm and is listed by its chemical nomenclature pursuant to Proposition 65. DEHP, listed by the State of California under Proposition 65, shall be referred to hereinafter as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: sporting toys containing DEHP, including, but not limited to, *DesignWare 4 Sports Balls #SPBL1821 (#6 61526 08104 3)* which American Greetings manufactured, distributed, and/or sold in the State of California. All such sporting toys containing DEHP are referred to hereinafter as the "Products".

1.4 Notice of Violation

On May 23, 2008, Dr. Held served American Greetings Corporation and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (hereinafter "Notice") that provided American Greetings Corporation and public enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for failing to warn consumers that the Products exposed users in California to the Listed Chemical.

1.5 No Admission

American Greetings denies the material factual and legal allegations contained in Dr. Held's Notice, and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by American Greetings 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 American Greetings of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by American Greetings. However, this section shall not diminish or otherwise affect American Greetings' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 3, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

As of the Effective Date, American Greetings represents that it is no longer involved in the chain of distribution of Products in the State of California.

In the event such Products are sold, shipped or offered to be shipped for sale in California after the Effective Date, such Products shall be sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.1(a) of this Settlement Agreement.

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 of 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 if not eliminate the chance that an overwarning situation will arise.

(a) **Retail Store Sales.**

(i) **Product Labeling.** American Greetings may affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by American Greetings 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, American Greetings 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.

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, the following statement must be used:¹

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

[list products for which warning is required]

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Products containing less than or equal to 1,000 parts per million of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Product Sales Confirmation

American Greetings represents that, as a direct result of the Notice issued May 23, 2008, it promptly discontinued the sale of the Products into California and recalled the Products from all retail locations.

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

In settlement of all the claims referred to in this Settlement Agreement, American Greetings shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25249.12(c), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). American Greetings shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust For OEHHA" 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: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Dr. Held's counsel on or before April 3, 2009 at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Dr. 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. American Greetings 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 Dr. 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. American Greetings shall reimburse Dr. Held and his counsel a total of \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to American Greetings' attention, and negotiating a settlement in the public interest. American Greetings shall issue a separate 1099 for fees and costs (EIN: 20-3929984), and shall make the check payable to "Hirst & Chanler LLP" and deliver the check within ten days of the Effective Date to the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of American Greetings

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 of this Settlement Agreement, Dr. 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 American Greetings and each of its downstream 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 "releasees"). This release is limited to those claims that arise under Proposition 65 as such claims relate to American Greetings' alleged failure to warn about exposures to the Listed Chemical contained in the Products. 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 to any distributors or suppliers who sold the Products or any component parts thereof to American Greetings.

5.2 American Greetings' Release of Dr. Held

American Greetings waives any and all claims against Dr. 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 Dr. 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 the Settlement Agreement an action arises related to a dispute between the Parties with respect to any provision of this Settlement Agreement, the prevailing Party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

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. 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 American Greetings shall provide written notice to Dr. 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.

10. 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 American Greetings:

Matthew I. Kaplan
TUCKER ELLIS & WEST LLP
515 South Flower St., 42nd Floor
Los Angeles, CA 90071

To Dr. Held:

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.

11. 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.

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

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

13. MODIFICATION

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

14. 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 8:58 pm, 3/25/09

Date: _____

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

By: _____
AMERICAN GREETINGS
CORPORATION

APPROVED AS TO FORM:**APPROVED AS TO FORM:**

Date: 3/25/09
HIRST & CHANLER LLP

Date: _____
TUCKER ELLIS & WEST LLP

By: Christopher M. Martin
Christopher M. Martin
Attorneys for ANTHONY E. HELD,
Ph.D., P.E.

By: _____
Matthew I. Kaplan
Attorneys for AMERICAN GREETINGS
CORPORATION

14. **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: _____

By: _____
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 3-30-2009

By: 
AMERICAN GREETINGS
CORPORATION

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

By: _____
Christopher M. Martin
Attorneys for ANTHONY E. HELD,
Ph.D., P.E.

APPROVED AS TO FORM:

Date: 3-30-09
TUCKER ELLIS & WEST LLP

By: 
Matthew I. Kaplan
Attorneys for AMERICAN GREETINGS
CORPORATION