

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., Lakeshore Equipment Company and Lakeshore Learning Materials

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter “Held”), Lakeshore Equipment Company and Lakeshore Learning Materials (hereinafter “Lakeshore” or “Defendants”), with Held and Lakeshore collectively referred to as the “Parties.” Held is an individual residing in California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Each Defendant employs ten or more persons and are each 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

Held alleges that Lakeshore manufactured, distributed and/or sold in the State of California sporting toys/children’s items containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP 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/children’s items containing DEHP, including, but not limited to the *Lakeshore Soft & Safe Baby Bowling Set* (#6 33682 07751 2). All such items shall be referred to herein as the “Products”.

1.4 Notice of Violation

On May 23, 2008, Held served Lakeshore and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”)

that provided Lakeshore and such public enforcers with notice that alleged that Lakeshore was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical.

1.5 No Admission

Defendants deny the material, factual and legal allegations contained in Held's Notice and Supplemental Notice and maintain that all products that they have manufactured, 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 Lakeshore 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 Lakeshore of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lakeshore. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendants under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 18, 2008.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Lakeshore shall not sell, ship, or offer to be shipped for sale in California any Products containing the Listed Chemical unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

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

(a) Warnings For Retail Store Sales.

(i) Product Labeling. Lakeshore may perform their warning obligations by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in retail outlets by Lakeshore or their 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.

(ii) Point-of-Sale Warnings. Lakeshore may perform their warning obligations 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 states:

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 is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:¹

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

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

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. Lakeshore shall satisfy their warning obligations for Products 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 Sections 2.1(b)(i) and (ii).

(i) 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 the display and/or description 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 and/or description of the Product, Lakeshore 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 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 and/or description of the Product. On each page where the designated symbol

appears, Lakeshore must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Lakeshore elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the date of entry of this Settlement Agreement.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Product 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, such as a drop-down menu that appears whenever a Product is ordered for shipping to an address with a zip code in California. 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:
▼.

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any Products manufactured before the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as those containing less than 1,000 parts per million (“ppm”) of phthalate chemical, as measured by Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C. The warnings required pursuant to Section 2.1 above shall not be required for such Reformulated Products.

2.4 Reformulation Commitment

Lakeshore hereby commits that one hundred percent (100%) of the Products that they manufacture for sale in California after November 18, 2008, shall qualify as Reformulated Products or shall otherwise be exempt from the warning requirements of Section 2.1. Further, Lakeshore represents that, as a direct result of the Notice issued on May 23, 2008, they began to immediately implement a process for the reformulation of the Products.

3. MONETARY PAYMENTS

In settlement of all claims referred to in this Settlement Agreement, Lakeshore shall pay \$11,000 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 (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Lakeshore 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 \$8,250 representing 75% of the total penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$2,750 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 prior to payment. Held will cause a W-9 Form with respect to himself to be provided to Lakeshore or Lakeshore's counsel prior to payment.

Payment shall be delivered to Dr. Held's counsel on or before November 18, 2008, 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 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. Lakeshore 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. Lakeshore shall reimburse Held and his counsel the total of \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to Lakeshore's attention and negotiating a settlement in the public interest. Hirst & Chanler LLP will cause a completed W-9 Form with respect to itself to be provided to Lakeshore or Lakeshore's counsel prior to payment. Lakeshore shall issue a 1099 to Hirst & Chanler LLP for the above fees and costs. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered on or before November 18, 2008, 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 Release of Lakeshore 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, Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and on behalf of the general public to the extent allowed by law, 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 Lakeshore and each of their 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 "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Lakeshore's alleged failure to warn about exposures to or identification of 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 any distributors or suppliers who sold the Products or any component parts thereof to Lakeshore.

5.2 Lakeshore's Release of Held

Lakeshore 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 them 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) Lakeshore seeks modification of this Settlement Agreement; or (3) Lakeshore 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. 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 Lakeshore 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.

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 Lakeshore:

Rupert P. Hansen
COX, WOOTTON, GRIFFIN, HANSEN & POULOS, LLP
190 The Embarcadero
San Francisco, CA 94105

and

Michael A. Kaplan
Lakeshore Learning Materials
Lakeshore Equipment Company
2695 E. Dominguez Street
Carson, CA 90895

To 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.

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 12:06 pm, 11/5/08

Date: _____

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

By: _____
Defendant, LAKESHORE EQUIPMENT COMPANY; LAKESHORE LEARNING MATERIALS

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

Date: _____
COX, WOOTTON, GRIFFIN,
HANSEN & POULOS LLP

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

By: _____
Rupert P. Hansen
Attorneys for Defendants
LAKESHORE EQUIPMENT
COMPANY; LAKESHORE
LEARNING MATERIALS

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: _____

Date: _____

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

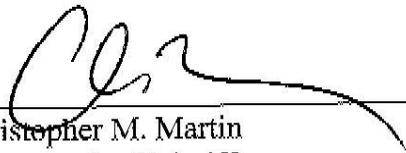
By: _____
Defendant, LAKESHORE EQUIPMENT
COMPANY; LAKESHORE LEARNING
MATERIALS

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 11/19/08
HIRST & CHANLER LLP

Date: _____
COX, WOOTTON, GRIFFIN,
HANSEN & POULOS LLP

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

By: _____
Rupert P. Hansen
Attorneys for Defendants
LAKESHORE EQUIPMENT
COMPANY; LAKESHORE
LEARNING MATERIALS

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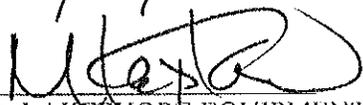
AGREED TO:

Date: _____

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

AGREED TO:

Date: 11/18/08

By: 
Defendant, LAKESHORE EQUIPMENT
COMPANY; LAKESHORE LEARNING
MATERIALS

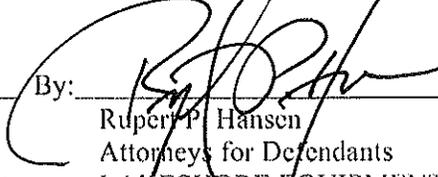
APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

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

APPROVED AS TO FORM:

Date: 11/18/08
COX, WOOTTON, GRIFFIN,
HANSEN & BOULOS LLP

By: 
Rupert P. Hansen
Attorneys for Defendants
LAKESHORE EQUIPMENT
COMPANY; LAKESHORE
LEARNING MATERIALS