

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held Harriet Carter Gifts and Etna Products Co., Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter "Held") and Etna Products co., Inc., (hereinafter "Etna"), with Harriet Carter Gifts as an intended third party beneficiary. Held and Etna shall 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. Etna 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 Etna has manufactured, distributed and Harriet Carter Gifts has sold in the State of California children's vinyl mats containing di(2ethylhexyl)phthalate including, but not limited to, the Water Wonder Mat/Aqua Play Pad#B3906/HC3906. 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:

children's vinyl mats 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 June 5, 2008, Held served Harriet Carter Gifts and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Harriet Carter Gifts and such public enforcers with notice that alleged that Harriet Carter Gifts 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. Etna has represented that it was the manufacturer of the product identified in the June 5, 2008 Notice. In this agreement, Etna stands as indemnitor for Harriet Carter pursuant to the June 5, 2008 Notice, and Harriet Carter is an intended third party beneficiary to this agreement. Held also served a separate document entitled "60-Day Notice of Violation" on Etna and public enforcers.

1.5 No Admission

Etna 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 Etna 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 Etna of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Etna. However, this section shall not diminish or otherwise affect the obligations, responsibilities

and duties of Etna under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that this Settlement Agreement is fully executed by both parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Etna 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.

2.2 Product Warnings

After the Effective Date, Etna 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 Section 2.3 or comply with the reformulation requirements of Phthalate Free Products set out in Section 2.1. The warnings for catalogs set forth in section 2.4, however, shall be required beginning six months of the Effective Date.

Any warning issued for Products pursuant to Section 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.** Etna may perform its warning obligation 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 Etna or its agents, that states:¹

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.** Etna may perform its 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., Phthalate Free as defined in Section 2.1), the following statement must be used:

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]

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.

2.4 Warnings For Mail Order Catalog and Internet Sales. Etna shall satisfy its 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 sub sections (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, Etna 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 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, Etna must provide a reference directing the consumer to the warning language and definition of the designated symbol.

If Etna elects to sell its products in mail order catalog after the Effective Date, then the warnings must be included in all catalogs offering to sell one or more Products printed after August 2009.

(b) 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. 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 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, Etna shall pay \$4,000 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). Etna 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 (OEHHA) in the amount of \$3,000, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$1,000, 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 \$3,000. The second 1099 shall be issued to Held in the amount of \$1,000, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

The payments shall be delivered on or before February 28, 2009 at the following address:

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

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, Etna shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Etna's attention, and negotiating a settlement in the public interest. Etna shall pay Held and his counsel \$24,500 for all attorneys' fees, expert and investigation fees, and related costs. The first payment of \$6,500 shall be delivered on or before February 28, 2009, the second payment of \$9,000 shall be delivered before May 30, 2009, and the final payment of \$9,000 shall be delivered before August 30, 2009. All payments shall be made to Hirst & Chanler, LLP at the following address:

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

Etna shall issue a separate 1099 for fees and cost paid in the amount of \$24,500 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Etna 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 Etna and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (specifically including Harriet Carter Gifts), 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 Etna'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 Etna.

5.2 Etna's Release of Held

Etna 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.

5.3 Dismissal of Harriet Carter Gifts

Upon receipt of all payments to be made pursuant to this agreement, Held agrees to dismiss the action filed by him against Harriet Carter Gifts on September 8, 2008 as San Francisco Superior Court case number CGC-08-479571. The action will be dismissed without prejudice.

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. 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 then Etna 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.

8. 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 Etna:

Mark L. Manewitz
Herrick, Feinstein, LLP
One Gateway Center
Newark, NJ 07102

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.

9. 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.

10. 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).

11. MODIFICATION

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

12. ATTORNEY'S FEES

In the event a dispute arises with respect to any provision of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in

connection with such dispute.

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 style="text-align: center;">AGREED TO:</p> <p>Date: <u>4/7/2009</u></p> <p>By: <u><i>Anthony E Held</i></u> Anthony Held</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Etna Products Co., Inc.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>4/16/09</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u><i>Daniel Bornstein</i></u> Daniel Bornstein Attorneys for Anthony Held</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">HERRICK FEINSTEIN, LLP</p> <p>By: _____ Mark L. Manewitz Attorneys for Etna Products Co., Inc.</p>

connection with such dispute.

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.

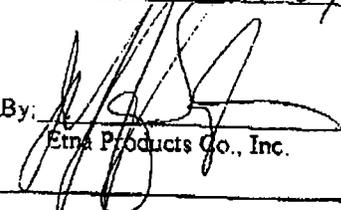
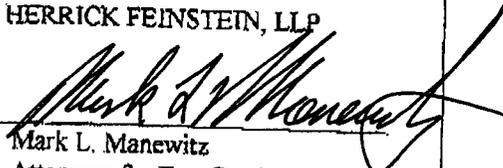
<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Anthony Held</p>	<p>AGREED TO:</p> <p>Date: <u>2/26/09</u></p> <p>By:  Etna Products Co., Inc.</p>
<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>By: _____ Daniel Bornstein Attorneys for Anthony Held</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>2/26/09</u></p> <p>HERRICK FEINSTEIN, LLP</p> <p>By:  Mark L. Manewitz Attorneys for Etna Products Co., Inc.</p>

EXHIBIT A

The Products covered by this Settlement Agreement are children's vinyl mats containing di(2-ethylhexyl)phthalate including, but not limited to, the following items identified by their model numbers:

Water Wonder Mat/Aqua Play Pad#B3906/HC3906