

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and Global Design Concepts, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Held") and Global Design Concepts Inc., (hereinafter "Global"), with Held and Global 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. Global 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 Global has manufactured, distributed and/or sold in the State of California children's toy, child-care and children's products containing di(2ethylhexyl)phthalate including the Fun Tote with Bonus! Sand Toys, Spongebob Squarepants Waist Bag, Go Diego Go Backpack with Bonus ID Holder, Dora Sling Bag, and Diego Diver Inflatable Bag containing di(2ethylhexyl)phthalate ("DEHP"). DEHP and other phthalates are 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 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:

Global's children's vinyl toys, child care products and children's products as set forth in the 60 day notice and supplemental notice. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about June 5, 2008, Held served Global and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Global and such public enforcers with notice that alleged that Global 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. A Supplemental 60-day notice was served on or about November 7, 2008. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean 60 days

after the date of Held's service of the Supplemental 60-Day notice.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

Except as provided for in this Agreement, as of the Effective Date, Global shall only manufacture or cause to be manufactured Products for sale in California that are Phthalate Free, as set forth below [or for items other than child care articles or children toys, shall otherwise be exempt from or comply with the warning requirements set forth in Section 2.5]. 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, or equivalent methods as may be allowed under Proposition 65.

Global further commits that 50% of the Products that it offers for sale in California after the Effective Date, shall be Phthalate Free, or shall otherwise be exempt from or comply with the warning requirements as set forth in Section 2.5. Global further commits that 100% of the Products that it offers for sale in California within 180 days of the Effective Date shall be Phthalate Free or shall otherwise be exempt from or comply with the warning requirements set forth in Section 2.5.

2.2 Product Warnings

After the Effective Date, except as provided for in this Settlement Agreement, Global 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 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 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.** Global 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 Global or its agents, that states:¹

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

(b) **Point-of-Sale Warnings.** Global 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 a 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.

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 a 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 Catalog and Internet Sales.

Global may satisfy its warning obligations for Products sold via catalog or the Internet for sale in California by providing a warning: (i) in the catalog; or (ii) on the website. Warnings given in the 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) **Catalog Warning.** Any warning provided in a 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 a 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, Global 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

a 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, Global must provide a reference directing the consumer to the warning language and definition of the designated symbol.

If Global elects to sell its products through catalog or the internet after the Effective Date, then the warnings must be included in all catalogs or internet offering to sell one or more Products printed after the Effective Date.

(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 a 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 a chemical known to the State of California to cause birth defects and other reproductive harm

2.5 Exceptions To Warning Requirements

Except as otherwise provided for in this Agreement, the reformulation and warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- (i) Any Products manufactured before the Effective Date;
- (ii) Phthalate Free Products (as defined in Section 2.1); or
- (iii) Products, other than child care articles and children toys, that comply with a Proposition 65 safe harbor, such as a maximum allowable dose limit (MADL) or no significant risk level (NSRL), provided that Global shall give written notice (and provide documentary support) to Held with respect to any assertion that a Product complies with a Proposition 65 safe harbor level and Held shall be entitled to challenge such assertion in a court of law if the parties are unable to resolve the dispute in good faith informally.

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

In settlement of all the claims referred to in this Settlement Agreement against it, Global shall pay \$4,000.00 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 funds remitted to Held as provided by California Health & Safety Code §25249.12(d). Global 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 \$3,000.00, representing 75% of the total penalty, and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$1,000.00, 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 \$3,000.00. The second 1099 shall be issued to Held in the amount of \$1,000.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due. The payments shall be delivered within two (2) business days after the Effective Date, 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, Global shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Global's attention, and negotiating a settlement in the public interest. Global shall pay Held and his counsel \$26,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The payment of \$26,000.00 shall be made payable to Hirst & Chanler LLP and shall be delivered on or before two (2) business days after the Effective Date, at the following address:

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

Global shall issue a separate 1099 for fees and cost paid in the amount of \$26,000.00 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Global 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 Global and its parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, employees, and sister and parent entities and each of Global's downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, (including but not limited to KB Toys Retail, Inc., KB Toys, Inc., Kid World, National Stores, Inc., Fallas-Paredes, Burlington Coat Factory Warehouse Corporation, Target Corporation) franchisees, dealers, customers, owners,

purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, 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 Global's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products and each of its Releasees, but only for Claims that could have been asserted in connection with any of Global's Products.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys and successors and/or assigns, 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 Global.

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 Global.

The parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Global or the Releasees under Proposition 65 as covered under this release. If requested in writing by Global (within twelve months of the Effective Date), Global may ask Held to file a complaint and seek approval of this Settlement Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with Global and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating

the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, Global will reimburse Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$20,000. No fees under this paragraph will be due and owing to Held or his counsel unless a request is made to file a complaint and seek a consent judgment. Global will remit payment of such additional fees within ten days after written request made payable to Hirst & Chanler LLP, at the address set forth in Section 8 below.

5.2 Global's Release of Held

Global 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. 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, or federal

consumer product safety laws or regulations preempt the law then Global 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 Global:

Global Design Concepts, Inc.
Attn: Chief Executive Officer
10 West 33rd Street
Room 1100
New York, NY 10001-3317

With copy to:

Mark R. Kaster, Esq.
Dorsey & Whitney LLP
50 South 6th Street
Minneapolis, MN 55402

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. If Global determines that the provisions governing the warning or reformulation standard for DEHP in any other settlement agreement or consent judgment entered into by a regulated entity under Proposition 65 for the identical or virtually identical type of products are less stringent than the provisions of this Agreement, Global may, upon 30 days prior written notice to Held, request a modification of this Agreement. Held will inform Global, within 30 days after receipt of such written notice, on whether he will agree to such modification. If Held does not agree, the parties agree to use reasonable good faith efforts to confer and resolve their disagreement. If the parties are unable to resolve their disagreement, the parties agree to submit the matter to mediation. If the parties do not resolve their disagreement through mediation, either party may submit the matter to court for a modification pursuant to and consistent with this Section 11.

12. 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: <u>1/7/2009</u></p> <p>By: <u><i>Anthony E Held</i></u> Anthony Held</p>	<p>AGREED TO:</p> <p>Date: <u>1/7/09</u></p> <p>Global Design Concepts, Inc. By: <u><i>David Schultz</i></u> Its <u>Vice President/CEO</u>.</p>
<p>APPROVED AS TO FORM:</p> <p>Date: <u>1/7/2009</u></p> <p>HIRST & CHANLER LLP By: <u><i>Cliff Chanler</i></u> Cliff Chanler, Attorney for Held</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>1/7/09</u></p> <p>DORSEY & WHITNEY, LLP By: <u><i>Mark Kaster</i></u> Mark Kaster Attorney for Global Design Concepts, Inc.</p>