

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held And Westminster, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter "Held") and Westminster, Inc., (hereafter "Westminster"), with Held and Westminster 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. Westminster 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 Westminster has manufactured, distributed and/or sold in the State of California vinyl bathroom toys/children's items containing di(2ethylhexyl)phthalate including, but not limited to, *Tidy Tub Light Up Ducks, Item No. 03300 (#0 35594 03300)*. 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: vinyl bathroom 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 June 5, 2008, Held served Westminster and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Westminster and such public enforcers with notice that alleged that Westminster was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that Westminster sold exposed users in California to the Listed Chemical.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 10, 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, Westminster shall pay \$1,000 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). Westminster shall issue two separate checks, on or before November 15, 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 \$750, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$250 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 \$750. The second 1099 shall be issued to Held in the amount of \$250, 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 Westminster shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Westminster attention, and negotiating a settlement in the public interest. Westminster shall pay Held and his counsel \$14,000 for all attorneys' fees, expert and investigation fees, and related costs in 14 equal monthly installments of \$1,000 each. The first payment shall be made payable to Hirst & Chanler, LLP and shall be delivered on or before November 15, 2008, and continue through December 15, 2009. At the following address:

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

If Westminster is more than ten calendar days late on any monthly payment, then the remaining payments shall be accelerated and due within five calendar days of written notice of the acceleration from Held.

5. RELEASE OF ALL CLAIMS

5.1 Release of Westminster and All 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 Westminster and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Newbury Comics, Inc., Amazon.com, Inc., Amazon Services, Inc. and Old City Kites), 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 Westminster'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 Westminster.

5.2 Westminster's Release of Held

Westminster 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) Westminster, the Attorney General or the State of California seeks modification of this Settlement Agreement pursuant to Section 12 below; or (3) Westminster 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 Westminster 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 Westminster:

Max Ker-Seymer, President
Westminster, Inc.
159 Armour Drive
Atlanta, GA 30324

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.

<p style="text-align: center;">AGREED TO:</p> <p>Date: APPROVED By Anthony E Held at 9:01 am, 10/17/08</p> <p>By: <u><i>Anthony E Held</i></u> Anthony Held</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>October 17, 2008</u></p> <p>By: <u><i>[Signature]</i></u> Max Ker-Seymer, President Westminster, Inc.</p>
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EXHIBIT A

The Products covered by this Settlement Agreement are vinyl bathroom toys/children's items containing Di(2-ethylhexyl) phalate including, but not limited to, the *Tidy Tub Light Up Ducks*, Item No. 03300 (#0 35594 03300).