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11 Attorneys for Defendant
LEAP YEAR PUBLISHING, LLC

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF LOS ANGELES
15 UNLIMITED CIVIL JURISDICTION
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18 ANTHONY E. HELD, Ph.D., P.E.,

19 Plaintiff,

20 v.

21 LEAP YEAR PUBLISHING, LLC; and
DOES 1 through 150, inclusive,

22 Defendant.
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Case No. BC 406523

STIPULATION RE: SETTLEMENT

Health & Safety Code § 25249.6 *et seq.*

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1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and Leap Year Publishing, LLC

This Stipulation Re: Settlement (“Stipulation” or “Settlement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter “Held”) and Leap Year Publishing, LLC (hereinafter “Leap Year”), with Held and Leap Year collectively referred to as the “Parties.”

1.2 Plaintiff

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.

1.3 Defendant

Leap Year employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

1.4 General Allegations

Held alleges that Leap Year manufactured, distributed, and/or sold in the State of California certain children’s notebooks containing di(2-ethylhexyl)phthalate (commonly referred to as “DEHP”). DEHP 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. DEHP is referred to herein as the “Listed Chemical.”

1.5 Product Description

The products that are covered by this Settlement are defined as children’s notebooks containing di(2-ethylhexyl)phthalate including, but not limited to, *Leap Year Sports Notes (#7 88958 36067 3)*. All such products are referred to hereinafter as the “Products”.

1.6 Notice of Violation

On November 7, 2008, Held served Leap Year and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided Leap Year with notice of alleged violations of Health & Safety Code §25249.6 for its alleged failure to warn consumers

1 that the Products that Leap Year sold exposed users in California to the Listed Chemical.

2 **1.7 Complaint**

3 On January 28, 2009, Held, who was and is acting in the interest of the general public in
4 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
5 County of Los Angeles against Leap Year, and Does 1 through 150, alleging violations of Health
6 & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in the Products
7 manufactured distributed and/or sold by Leap Year.

8 **1.8 No Admission**

9 Leap Year denies the material factual and legal allegations contained in Held’s Complaint,
10 and in its Answer filed March 17, 2009, Leap Year asserted certain affirmative defenses against
11 the claims alleged by Held. Nothing in this Settlement shall be construed as an admission by
12 Leap Year of any fact, finding, issue of law, or violation of law, nor shall compliance with this
13 Settlement constitute or be construed as an admission by Leap Year of any fact, finding,
14 conclusion, issue of law or violation of law, such being specifically denied by Leap Year.
15 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
16 duties of Leap Year under this Settlement

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Settlement only, the parties stipulate that this Court has jurisdiction
19 over Held and Leap Year as to the allegations contained in the Complaint, that venue is proper in
20 the County of Los Angeles and that this Court has jurisdiction to enter and enforce the provisions
21 of this Settlement.

22 **1.10 Effective Date**

23 For purposes of this Settlement, the term “Effective Date” shall mean October 9, 2009.

24 **2. INJUNCTIVE RELIEF:**

25 **2.1 No Further Sale or Distribution of the Products**

26 As of the Effective Date of this Stipulation, Leap Year shall not directly sell or otherwise
27 distribute the Products in California. Nothing in this Settlement shall be interpreted to relieve
28

1 Leap Year from any obligation to comply with any pertinent state or federal toxics control
2 laws (e.g., the federal ban on selling childcare items and certain children's toys containing
3 more than 1,000 ppm of DEHP).

4 **3. MONETARY PAYMENTS**

5 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

6 In settlement of all the claims referred to in this Settlement, Leap Year shall pay \$ 5,000
7 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192,
8 with 75% of these funds (\$3,750) remitted to the State of California's Office of Environmental
9 Health Hazard Assessment and the remaining 25% of these funds (\$1,250) remitted to Held as
10 provided by California Health & Safety Code §25249.12(d). Leap Year shall issue two separate
11 checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for
12 the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
13 amount of \$3,750, representing 75% of the total penalty, and (b) one check to Hirst & Chanler
14 LLP in Trust for Held in the amount of \$1,250, representing 25% of the total penalty. Two
15 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,
16 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be
17 furnished by his counsel to counsel for Leap Year. The payments shall be mailed by first class
18 U.S. Mail, delivered to the following address and post-marked on or before October 9, 2009:

19 Hirst & Chanler LLP
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. REIMBURSEMENT OF FEES AND COSTS**

25 **4.1 Attorney Fees and Costs**

26 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them. Thereafter, the Parties
28 reached accord on the amount of attorneys' fees and costs to be paid pursuant to general contract
principles and under the private attorney general doctrine codified at California Code of Civil

1 Procedure (CCP) §1021.5. Leap Year shall pay Held's counsel \$22,000 for fees and costs
2 incurred as a result of investigating, bringing this matter to Leap Year's attention, and litigating
3 and negotiating a settlement in the public interest. Leap Year shall issue a separate 1099 for fees
4 and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP." The
5 payment shall be mailed by first class U.S. Mail, post-marked on or before October 9, 2009 to the
6 following address:

7 Hirst & Chanler LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Release of Leap Year and Downstream Customers or Distributors**

14 In further consideration of the promises and agreements herein contained, and for the
15 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
16 current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to
17 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
18 including, without limitation, all actions, and causes of action, in law or in equity, suits,
19 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
20 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,
21 whether known or unknown, fixed or contingent (collectively "Claims"), that were brought or
22 could have been brought against Leap Year and its affiliates, subsidiaries, and their respective
23 officers, directors, attorneys, representatives, shareholders, agents, employees, insurers, sister and
24 parent entities and each of Leap Year's downstream distributors, wholesalers, licensors, licensees,
25 auctioneers, retailers (including, but not limited to, 99 Cents Only Stores), franchisees, dealers,
26 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
27 their respective officers, directors, attorneys, representatives, shareholders, agents, employees and
28 sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any other
statutory or common law Claims that could have been asserted including such Claims as relate to

1 Leap Year's and each of its Releasees alleged failure to warn about exposures to or identification
2 of the Listed Chemical contained in the Products.

3 **5.2 Leap Year's Release of Held**

4 Leap Year waives any and all claims against Held, his attorneys and other representatives,
5 for any and all actions taken or statements made (or those that could have been taken or made) by
6 Held and his attorneys and other representatives, whether in the course of investigating claims or
7 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
8 the Products.

9 **5.3 Waiver of California Civil Code §1542**

10 This Settlement is intended as a full and complete release and discharge of the Claims
11 which the parties may have against each other based on certain acts, conduct or omissions
12 occurring on or before the Effective date of this Settlement, and any and all damages arising
13 from, related to or sustained by reason of those Claims, whether the Claims and the damages are
14 now known or unknown, expected or unexpected, or have already developed or appeared or may
15 now be unknown but in the future may appear, develop, or become known.

16 Accordingly, the parties each expressly waive all rights under section 1542 of the Civil
17 Code of the State of California with respect to the specified Claims and the damages arising from,
18 related to, or sustained by reason of those Claims. The parties understand that section 1542 of the
19 Civil Code provides as follows:

20 **A general release does not extend to claims which the creditor**
21 **does not know or suspect to exist in his favor at the time of**
22 **executing the release, which if known by him must have**
materially affected his settlement with the debtor.

23 The parties hereby declare and represent to each other that they have read and each has
24 had an opportunity to consult with counsel regarding the meaning and implications of California
25 Civil code section 1542 and each does hereby waive its protections with respect to the specified
26 Claims.

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6. COURT APPROVAL

This Settlement is not final until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties, in which event any monies that have been provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Leap Year that the one-year period has expired, or that the Settlement has otherwise not been approved or entered by the Court.

7. SEVERABILITY

If, subsequent to the execution of this Settlement, any of the provisions of this Settlement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Settlement 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 state or federal law generally, or as to the Products, then Leap Year shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Settlement 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 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 Leap Year:

Nancy L. Stagg, Esq.
Fish & Richardson, P.C.
12390 El Camino Real.
San Diego, CA 92130

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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.

10. COUNTERPARTS, FACSIMILE SIGNATURES

This Settlement 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 documents.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Settlement. In furtherance of obtaining such approval, Held, Leap Year and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Settlement and obtain approval of the Settlement by the Court in a timely manner. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers, asserting any oral argument in support of the required motion for judicial approval, and defending any appellate review of the Court's approval. Within 30 days of judicial approval of this Settlement, Held shall execute and file with the Clerk of the Court a form Request for Entry of Dismissal of the entire action.

13. MODIFICATION

This Settlement may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of

1 any party and entry of a modified consent judgment by the Court.

2 **14. AUTHORIZATION**

3 The undersigned are authorized to execute this Settlement on behalf of their respective
4 parties and have read, understood, and agree to all of the terms and conditions of this Settlement.

5 **AGREED TO:**

AGREED TO:

6 Date: **APPROVED**
By Anthony Held at 8:24 am, Oct 02, 2009

Date: _____

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

By: _____
Defendant, LEAP YEAR PUBLISHING
LLC

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12 Approved and Stipulated.

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15 Date: _____

HIRST & CHANLER, LLP

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17 _____
Christopher Martin
Attorneys for Plaintiff Anthony Held

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21 Date: _____

FISH & RICHARDSON P.C.

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23 _____
Nancy L. Stagg
Attorneys for Defendant Leap Year Publishing,
24 LLC

1 any party and entry of a modified consent judgment by the Court.

2 **14. AUTHORIZATION**

3 The undersigned are authorized to execute this Settlement on behalf of their respective
4 parties and have read, understood, and agree to all of the terms and conditions of this Settlement.

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: _____

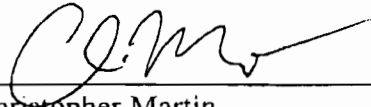
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9 By: _____
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: _____
Defendant, LEAP YEAR PUBLISHING
LLC

12 Approved and Stipulated.

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15 Date: 10.2.09

HIRST & CHANLER, LLP

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17 
18 Christopher Martin
Attorneys for Plaintiff Anthony Held

21 Date: _____

FISH & RICHARDSON P.C.

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23 _____
24 Nancy L. Stagg
Attorneys for Defendant Leap Year Publishing,
LLC

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any party and entry of a modified consent judgment by the Court.

14. AUTHORIZATION

The undersigned are authorized to execute this Settlement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

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

By: _____
Defendant, LEAP YEAR PUBLISHING
LLC

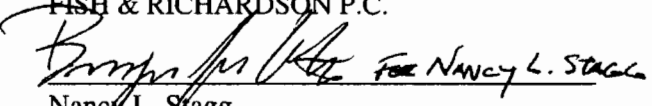
Approved and Stipulated.

Date: _____

HIRST & CHANLER, LLP

Christopher Martin
Attorneys for Plaintiff Anthony Held

Date: 10/6/09

FISH & RICHARDSON P.C.

Nancy L. Stagg
Attorneys for Defendant Leap Year Publishing,
LLC

1 any party and entry of a modified consent judgment by the Court.

2 **14. AUTHORIZATION**

3 The undersigned are authorized to execute this Settlement on behalf of their respective
4 parties and have read, understood, and agree to all of the terms and conditions of this Settlement.

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: 10/16/09

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

By: Ronald Gold partner
Defendant, LEAP YEAR PUBLISHING
LLC

12 Approved and Stipulated.

14 Date: _____

HIRST & CHANLER, LLP

Christopher Martin
Attorneys for Plaintiff Anthony Held

20 Date: _____

FISH & RICHARDSON P.C.

Nancy L. Stagg
Attorneys for Defendant Leap Year Publishing,
LLC