

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and A.W. Faber-Castell USA, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter “Held”), and A.W. Faber-Castell USA, Inc. (“A.W. Faber”), with Held and A.W. Faber 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. A.W. Faber employs ten or more persons and is 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 A.W. Faber manufactured, distributed and/or sold in the State of California children’s vinyl backpacks 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: children’s coloring kits containing DEHP, including, but not limited to the *Faber-Castell Deluxe 50 Piece Coloring Kit, #14510* (#0 92633 70283 3). All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about November 28, 2008, Held served A.W. Faber and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided A.W. Faber and such public enforcers with notice that alleged that A.W. Faber 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

A.W. Faber denies the material, factual and legal allegations contained in Held’s Notice and maintains that all products that it sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by A.W. Faber 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 A.W. Faber of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by A.W. Faber. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of A.W. Faber under this Settlement Agreement.

1.10 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean June 1, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS

2.1 Reformulation Commitments and Schedule

As of the Effective Date, A.W. Faber shall only manufacture, or cause to be manufactured, Products for sale in California that are Phthalate Limited. For purposes of

this Settlement Agreement, “Phthalate Limited” 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 applicable test protocols specified by the U.S. Consumer Product Safety Commission (“CPSC”). Products that are Phthalate Limited shall be referred to herein as “Reformulated Products.”

A.W. Faber hereby further commits that 100% of the Products that it ships for sale in California after the Effective Date shall be Reformulated Products. A.W. Faber also represents that, as a direct result of the Notice issued on November 28, 2008, the company began to immediately implement a process for the reformulation of the Products at issue. In addition, A.W. Faber discontinued the sale of *Faber-Castell Deluxe 50 Piece Coloring Kit, #14510* (#0 92633 70283 3) as a result of the Notice.

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

In settlement of all the claims referred to in this Settlement Agreement against it, A.W. Faber shall pay \$2,000 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 (hereinafter “OEHHA”) and the remaining 25% of these funds remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). A.W. Faber 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 \$1,500, representing 75% of the total penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$500, 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 five calendar days before the payment is due. Payment shall be delivered to Held's counsel on or before June 1, 2009 at the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street, Suite 214
Berkeley, CA 94710

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. A.W. Faber 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. A.W. Faber shall reimburse Held and his counsel \$24,000 for fees and costs incurred as a result of investigating, bringing this matter to A.W. Faber's attention, and litigating and negotiating a settlement in the public interest. The payment shall be made on or before June 1, 2009. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered to the following address:

Hirst & Chanler LLP
Attn: Proposition 65 Controller
2560 Ninth Street, Suite 214
Berkeley, CA 94710

5. RELEASE OF ALL CLAIMS

5.1 Release of A.W. Faber 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 in the interest 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 A.W. Faber and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and its 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 A.W. Faber'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 A.W. Faber.

5.2 A.W. Faber's Release of Held

A.W. Faber 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) A.W. Faber seeks modification of this Settlement Agreement; or (3) A.W. Faber 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 A.W. Faber 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 A.W. Faber:

Frederick Locker, Esq
LOCKER, GREENBERG & BRAININ, PC
420 Fifth Avenue
New York, NY 10018

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.

12. 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).

13. MODIFICATION

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

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:

Date: 04/28/2009

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

AGREED TO:

Date: _____

By: _____
A.W. FABER-CASTELL USA, INC.

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

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

APPROVED AS TO FORM:

Date: _____
LOCKER, GREENBERG &
BRAININ, PC

By: _____
Frederick Locker
Attorneys for
A.W. FABER-CASTELL USA, INC.

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


By: _____
A.W. FABER-CASTELL USA, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 4/29/09
HIRST & CHANLER LLP

Date: _____
LOCKER, GREENBERG &
BRAININ, PC

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

By: _____
Frederick Locker
Attorneys for
A.W. FABER-CASTELL USA, INC.

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:

Date: _____

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

AGREED TO:

Date: May 1, 2009

By: 
A.W. FABER-CASTELL USA, INC.

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

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

APPROVED AS TO FORM:

Date: _____
LOCKER, GREENBERG &
BRAININ, PC

By: _____
Frederick Locker
Attorneys for
A.W. FABER-CASTELL USA, INC.

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AGREED TO:

Date: _____

Date: _____

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

By: _____
A.W. FABER-CASTELL USA, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

Date: May 1, 2009
LOCKER, GREENBERG &
BRAININ, PC

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

By: Frederick Locker
Frederick Locker
Attorneys for
A.W. FABER-CASTELL USA, INC.