

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and Florida Pool Products, Inc.

This Settlement Agreement ("Agreement") is between Anthony E. Held, Ph.D., P.E ("Held") and Florida Pool Products, Inc., ("Florida Pool"), with Held and Florida Pool 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. Florida Pool is a person in the course of doing business within the meaning of California Health & Safety Code §25249.11.

1.2 General Allegations

Held alleges that Florida Pool has manufactured, distributed and/or sold in the State of California inflatable vinyl toys/children's items containing di(2ethylhexyl)phthalate including, but not limited to, a product named *Sand N Sun Swim Easy Swim Training Aid, #449-2-3852WM (#0 51978 92385 3)*. 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 as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: inflatable vinyl toys/children's items containing di(2ethylhexyl)phthalate sold by Florida Pool. All such items shall be referred to herein as the "Products."

1.4 Notice of Violation

On or about May 23, 2008, Held served Florida Pool, Florida Pool's customer, Wal-Mart Stores, Inc. and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice that alleged that Florida Pool and Wal-Mart were in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that they sold exposed users in California to the Listed Chemical.

1.5 No Admission

Florida Pool and the Releasees (defined below in Section 5.1) deny the material factual and legal allegations contained in Held's Notice and maintain that all products it 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 Florida Pool or the Releasees 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 Florida Pool of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Florida Pool. This Section, however, shall not diminish or otherwise affect the obligations, responsibilities and duties of Florida Pool under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 31, 2008.

2. INJUNCTIVE RELIEF: REFORMULATION

As of the Effective Date, Florida Pool shall only sell the Products in California if they 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, or other comparable methodologies recognized and accepted by one or more federal and/or state agencies, including the Consumer Product Safety Commission, to determine whether the respective levels have been exceeded in its Products.

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

In settlement of all the claims referred to in this Settlement Agreement, Florida Pool shall pay \$10,000 in civil penalties to be apportioned in accordance with California Health & Safety Code section 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 section 25249.12(d). Florida Pool shall issue two separate checks, on or before January 14, 2009, 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 \$7,500, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$2,500 representing approximately 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 \$7,500. The second 1099 shall be issued to Held in the amount of \$2,500, whose address and tax identification number shall be furnished to Florida Pool concurrent with the execution of this Agreement. The payment shall be made payable to Hirst & Chanler, LLP in Trust for Anthony Held and shall be delivered on or before

January 14, 2009, to the following address:

Proposition 65 Controller
Hirst & Chanler, LLP
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 Florida Pool has reimbursed Held's counsel for its fees and costs, incurred as a result of investigating, bringing this matter to Florida Pool's attention, and negotiating a settlement in the public interest. Florida Pool shall pay Held and his counsel \$28,000 for all attorneys' fees, expert and investigation fees, and related costs. Florida Pool shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before January 14, 2009, to the following address:

Proposition 65 Controller
Hirst & Chanler, LLP
Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

5. RELEASE OF ALL CLAIMS

5.1 Release of Florida Pool and All Downstream Customers

In further consideration of the promises and agreements contained in this Agreement, 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 (collectively, "Held"), 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 Florida Pool and each of its suppliers, distributors, wholesalers, licensors, licensees, auctioneers, retailers, 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, successors and assigns, and customers including, but not limited to, Wal-Mart Stores, Inc. ("Wal-Mart"), and Wal-Mart's affiliates and/or subsidiaries (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Florida Pool's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

5.1.1 Held's General Release of Florida Pool

Excepting Wal-Mart and Wal-Mart's affiliates and/or subsidiaries, Held releases and forever discharges Releasees only from the Claims alleged in the Notice. Held provides this Claims known or unknown, suspected or unsuspected, arising out of the subject matter of the Claims alleged in the Notice. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held expressly waives and relinquishes any and all rights and benefits under or that may be conferred by the provisions of section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, these releases shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.2 Florida Pool's Release of Held

Florida Pool 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 Agreement, any of the provisions of this 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 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 Florida Pool 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 Florida Pool:

Karen S. McLead, CP, FRP
Florida Pool Products, Inc.
Director of Legal & Administrative Affairs
Post Office Box 6025
Clearwater, FL 33758

and,

J. Craig Williams, Esq.
WLF | The Williams Lindberg Law Firm, PC
100 Bayview Circle
South Tower, Suite 330
Newport Beach, CA 92660-2984

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 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)

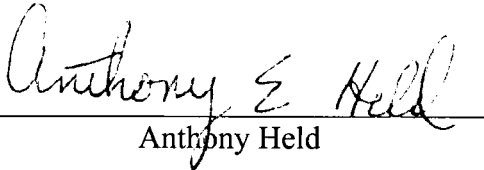
Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

11. MODIFICATION

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

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 Agreement.

AGREED TO:	AGREED TO:
Date: <u>12/24/08</u>	Date: _____
By: <u></u> Anthony Held	By: _____ Karen S. McLead, Director of Legal & Administrative Affairs Florida Pool, Inc.

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

This 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 California Health & Safety Code section 25249.7(f).

11. **MODIFICATION**

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

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 Agreement.

AGREED TO:	AGREED TO:
Date: _____	Date: <u>December 29, 2008</u>
By: _____ Anthony Held	By: <u>Karen S. McLead</u> Karen S. McLead, Director of Legal & Administrative Affairs Florida Pool, Inc. <i>Products</i>