

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Anthony Held, Supervalu International, a dba of SUPERVALU Holdings, Inc., and WinCo Foods, LLC

This Settlement Agreement ("Agreement") is entered into by and among Anthony E. Held, Ph.D., P.E (hereinafter "Held"), Supervalu International, a dba of SUPERVALU Holdings, Inc., (hereinafter "Supervalu International") and WinCo Foods, LLC, (hereafter "WinCo"), all hereinafter 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. Supervalu International and WinCo employ ten or more persons and are persons in the course of doing business for purposes of Proposition 65.

#### 1.2 General Allegations

Held alleges that Supervalu International and WinCo have manufactured, distributed and/or sold in the State of California vinyl bathroom toys and children's items containing di(2ethylhexyl)phthalate (DEHP) including but not limited to a *Rubber Duck Wash Cloth Set, PT8489, (#0 41130 22728 8)*. The chemical, di(2ethylhexyl)phthalate (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. Di(2ethylhexyl)phthalate (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: vinyl bathroom toys and children's items containing di(2ethylhexyl)phthalate(DEHP) including, but not limited to, a Rubber Duck Wash Cloth Set, (#041130 2272 8). All such items shall be referred to herein as the "Products."

### **1.4 Notice of Violation**

On or about April 22, 2008, Held served WinCo and Supervalu International and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided WinCo, Supervalu International and such public enforcers with notice that alleged that WinCo and Supervalu International were in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that WinCo and Supervalu International sold and/or distributed exposed users in California to the Listed Chemical.

### **1.5 No Admission**

WinCo and Supervalu International deny the material factual and legal allegations contained in Held's Notice and maintain that all products that they have 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 WinCo or Supervalu International 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 WinCo or Supervalu International of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by WinCo and Supervalu International. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of WinCo and Supervalu International under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 1, 2008.

**2. INJUNCTIVE RELIEF: REFORMULATION**

As of the Effective Date, Supervalu International and WinCo shall only sell and/or distribute Products 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, Supervalu International and WinCo shall pay \$3,000 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). Supervalu International and WinCo shall issue two separate checks, on or before December 1, 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 \$2,250, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$750 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 \$2,250. The second 1099 shall be

issued to Held in the amount of \$750, whose address and tax identification number shall be furnished to Supervalu International and WinCo's counsel no later than November 14, 2008.

**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 Supervalu International and WinCo shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to the attention of Supervalu International and WinCo, and negotiating a settlement in the public interest. Supervalu International and WinCo shall pay Held and his counsel \$25,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to Hirst & Chanler, LLP and shall be delivered on or before December 1, 2008, to the following address:

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

**5. RELEASE OF ALL CLAIMS**

**5.1 Held's Release of Supervalu International and WinCo and Their 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 Supervalu International and WinCo and each of their downstream 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 (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Supervalu International's and WinCo's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

Dr. Held also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice. Dr. 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on her 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, the release hereby given 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.

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 Supervalu International or WinCo.

#### **5.2 Supervalu International's and WinCo's Release of Held**

Supervalu International and WinCo waive 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, then Supervalu International and/or WinCo shall provide written notice to Held of any asserted change in the law, and shall they 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 or Parties at the following addresses:

To WinCo:

Attn: Legal Department  
WinCo Foods, LLC  
650 N. Armstrong Place  
Boise, ID 83704

To Supervalu International, a dba of SUPERVALU Holdings, Inc.:

Supervalu International  
Legal Department  
11840 Valley View Road  
P.O. Box 990  
Eden Prairie MN 55344

and:

Renée D. Wasserman  
Rogers Joseph O'Donnell  
Robert Dollar Building, 10th Floor  
311 California Street  
San Francisco, CA 94104

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 or Parties 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)**

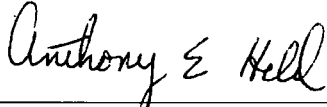
Held agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

**11. MODIFICATION**

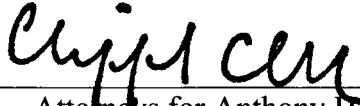
This Settlement Agreement may be modified only by a written agreement of the Parties.

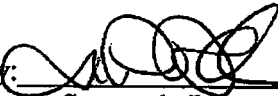
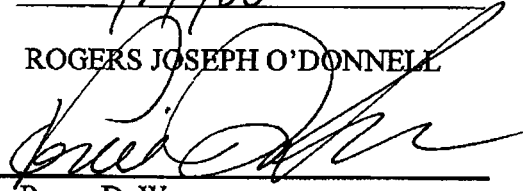
**12. AUTHORIZATION**

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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <u>11/11/2008</u>	Date: _____
By: <u></u> Anthony Held	By: _____ Michael J. Read, Vice President Public and Legal Affairs WinCo Foods, LLC



	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Supervalu International, a dba of SUPERVALU Holdings, Inc</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>11/12/2008</u></p> <p style="text-align: center;">HIRST &amp; CHANLER</p> <p>By: <u></u> Attorneys for Anthony Field</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">ROGERS JOSEPH O'DONNELL</p> <p>By: _____ Renee D. Wasserman Attorneys for Supervalu International, a dba of SUPERVALU Holdings, Inc. and WinCo Foods, LLC</p>

	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>11/12/08</u></p> <p>By:   Supervalu International, a dba of  SUPERVALU Holdings, Inc</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">HIRST &amp; CHANLER</p> <p>By: _____  Attorneys for Anthony Held</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>11/12/08</u></p> <p style="text-align: center;">ROGERS JOSEPH O'DONNELL</p> <p>By:   Renee D. Wasserman  Attornerys for Supervalu International, a  dba of SUPERVALU Holdings, Inc. and  WinCo Foods, LLC</p>