

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and ZM International, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter “Held”) and ZM International, Inc., (hereinafter “ZM International”), with Held and ZM International 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. ZM International 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 ZM International has manufactured, distributed and/or sold in the State of California children’s vinyl backpacks containing di(2ethylhexyl)phthalate (“DEHP”) including, but not limited to, *Kidorable Dinosaur Backpack (#6 43762 40011 6)* and children’s vinyl raincoats containing DEHP including, but not limited to, *Kidorable My First Raincoat, Frog (#6 43762 31418 5)*. 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 chemicals known to the State of California to cause birth defects and other reproductive harm. 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: children's vinyl backpacks, purses and raincoats manufactured, distributed and/or sold in California by ZM International which contain the Listed Chemical. All such items shall be referred to herein as the "Products."

1.4 Notices of Violation

On or about November 7, 2008 and January 26, 2009, Held served ZM International and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notices") that provided ZM International and such public enforcers with notice that alleged that ZM International was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

ZM International denies the material factual and legal allegations contained in Held's Notices 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 ZM 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 ZM International of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by ZM International. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of ZM International under this

Settlement Agreement.

1.6 Effective Date

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

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, ZM International shall only manufacture, distribute, and or sell, or cause to be manufactured, distributed, and/or sold, 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”) 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 against it, ZM International shall pay \$4,000 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). ZM International shall issue two separate checks 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 (“Hirst & Chanler LLP in Trust for OEHHA”) in the amount of

\$3,000, representing 75% of the total penalty and (b) one check to “Hirst & Chanler LLP in Trust for A. Held” in the amount of \$1,000, 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 \$3,000. The second 1099 shall be issued to Held in the amount of \$1,000, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before ten days after the Effective Date, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
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, ZM International shall reimburse Held’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to ZM International attention, and negotiating a settlement in the public interest. ZM International shall pay Held and his counsel \$18,000 for all attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to “Hirst & Chanler LLP” and shall be delivered on or before ten days after the Effective Date, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
Capitol Mall Complex
455 Capitol Mall, Suite 605

Sacramento, CA 95814

ZM International shall issue a separate 1099 for fees and cost paid in the amount of \$18,000 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of ZM International 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 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 ZM International and each of its 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 ZM International's alleged failure to warn about exposures to or identification of DEHP contained in the Products.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against ZM International and each of its Releasees.

The Parties further understand and agree that the above releases 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 ZM International.

5.2 ZM International's Release of Held

ZM International 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. 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 ZM International 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:

For ZM International:

Jonathan Domsky, President
ZM International, Inc.
6801 West Howard Street
Niles, IL, 60714

With a copies to:

Peter Shakula, Esq.
Wood, Phillips, Katz, Clark & Mortimer
Citicorp Center, Suite 3800
500 West Madison Street
Chicago, IL 60661

For 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 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.

<p>AGREED TO:</p> <p>Date: APPROVED By Anthony E Held at 9:11 am, 2/20/09</p> <p>By: <u>Anthony E Held</u> Anthony Held</p>	<p>AGREED TO:</p> <p>Date: <u>2/23/09</u></p> <p>By: <u>[Signature]</u> ZM International Company, Inc.</p>
<p>APPROVED AS TO FORM:</p> <p>Date: <u>2/20/09</u></p> <p>HIRST & CHANLER LLP</p> <p>By: <u>[Signature]</u> Attorneys for Anthony Held</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>20 Feb 2009</u></p> <p>WOOD, PHILLIPS, KATZ, CLARK & MORTIMER</p> <p>By: <u>[Signature]</u> Peter Shakula, Esq. Attorneys for ZM International Company, Inc.</p>