

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony Held, Russell Brimer and Creaata (USA) Inc.

This Settlement Agreement is entered into by and between Russell Brimer, (hereinafter "Brimer") Anthony E. Held, Ph.D., P.E (hereinafter "Held"), (Brimer and Held are collectively referred to as "Claimants") and Creaata (USA) Inc., with Claimants and Creaata (USA) Inc. collectively referred to as the "Parties." Brimer and Held are individuals residing in California who seek to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Creaata (USA) Inc. employs ten or more persons and are persons in the course of doing business for purposes of Proposition 65.

### 1.2 General Allegations

Brimer alleges that Creaata (USA) Inc. has manufactured, distributed and/or sold in the State of California mugs with colored artwork or designs containing lead, specifically, the 12 Oz. Coffee Mug, Item Code SWA 1056. Lead 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 cancer, birth defects and other reproductive harm. Held alleges that Creaata (USA) Inc. has manufactured, distributed and/or sold in the State of California children's inflatable toys containing di(2ethylhexyl)phthalate specifically, the Inflatable Spirit 737, Item No. SWA0052, and PVC Keychains containing di(2ethylhexyl)phthalate specifically, the Spirit PVC Keychain, Item No.

SWA 1275. 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. Lead and Di(2ethylhexyl)phthalate shall be referred to herein as the "Listed Chemicals."

### **1.3 Product Descriptions**

The products that are covered by this Settlement Agreement are the 12 Oz. Coffee Mug, Item Code SWA 1056, containing Lead the Inflatable Spirit 737, Item No. SWA0052 and the Spirit PVC Keychain, Item No. SWA 1275 containing di(2ethylhexyl)phthalate. The three items listed above shall be collectively referred to herein as the "Products."

### **1.4 Notices of Violation**

On or about March 14, 2008, Brimer served Creaa (USA) Inc. and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Creaa (USA) Inc. and such public enforcers with notice that alleged that Creaa (USA) Inc. was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Mug Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On or about May 23, 2008, Held served Creaa (USA) Inc. and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Creaa (USA) Inc. and such public enforcers with notice that alleged that Creaa (USA) Inc. was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Inflatable Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On or about December 23, 2008,

Held served Creta (USA) Inc. and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" (the "Notice") that provided Creta (USA) Inc. and such public enforcers with notice that alleged that Creta (USA) Inc. was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the PVC Keychain Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Creta (USA) Inc. denies the material factual and legal allegations contained in Claimants' Notices and maintain 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 Creta (USA) Inc. 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 Creta (USA) Inc. of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Creta (USA) Inc. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Creta (USA) Inc. under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 30, 2009.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

**2.1 Reformulation Commitment**

As of the Effective Date, Creta (USA) Inc. shall only manufacture, distribute or sell or cause to be manufactured distributed or sold Products in California that are Lead or Phthalate Free, as set forth below. For purposes of this Settlement Agreement, "Lead Free" Products shall mean the materials for all colored artwork, designs or markings on the exterior must contain by weight no more than six one-hundredths of one percent (0.06%) lead as measured at Creta (USA) Inc.'s option, either before or after the material is fired onto (or otherwise affixed to) the Mug Product, using EPA Test Method 3050b or an equivalent test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than 600 ppm<sup>1</sup>, "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.

Creta (USA) Inc. further commits that 100% of the Products that it offers for sale in California after December 1, 2009, shall be Lead Free and Phthalate Free, or shall otherwise be exempt from the warning requirements as set forth in Section 2.4.

## **2.2 Product Warnings**

After the Effective Date, Creta (USA) Inc. shall not sell, ship, or offer to be shipped for sale in California, Products containing the Listed Chemicals unless such Products are shipped with the clear and reasonable warnings set out in Section 2.3 or comply with the reformulation requirements of Lead Free and Phthalate Free Products set out in Section 2.1, or be exempt pursuant to Section 2.4 below.

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<sup>1</sup> If Creta (USA) Inc. tests, or causes to be tested, the decoration after it is affixed to the Mug Product, the percentage of lead by weight must relate only to the other portions of the

Any warning issued for Products pursuant to Section 2.3 below, shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or, for Products shipped directly to an individual in California, before use.

**2.3 Warnings For Internet Sales.** Creaata (USA) Inc. shall satisfy their warning obligations for Products sold via the Internet to California residents by providing a warning on the website. Warnings given on the website shall identify the specific Product to which the warning applies as further specified in section (a) below.

**(a) Internet Website Warning.** A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

For Mug Products the Internet Website Warning shall state:

**WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical**

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decorating material and not include any calculation of non-decorating material.

**known to the State of California to cause birth defects or other reproductive harm.<sup>2</sup>**

or

**WARNING: This product contains lead, a chemical known to the state of California to cause birth defects or other reproductive harm**

For Inflatable Products the Internet Website Warning shall state:

**WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.**

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

For Mug Products:

**WARNING: Products identified on this page with this symbol ▼ contain Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.**

For Inflatable Products:

**WARNING: Products identified on this page with the following symbol ▼ contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm**

#### **2.4 Exceptions To Warning Requirements**

The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

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<sup>2</sup> This warning can only be used in conjunction with the sale of Mug Products with colored artwork or designs on the exterior that contain lead.

- (i) Any Products manufactured before the Effective Date; or
- (ii) Lead Free or Phthalate Free Products (as defined in Section 2.1).

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

In settlement of all the claims referred to in this Settlement Agreement against it, Crea (USA) Inc. shall pay two separate civil penalties. For the 12 Oz. Coffee Mug, Item Code SWA 1056 Products Crea (USA) Inc. shall pay \$700.00 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 Brimer as provided by California Health & Safety Code §25249.12(d). Crea (USA) Inc. 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 (OEHHA) in the amount of \$525.00, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Brimer in the amount of \$175.00, 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 \$525.00. The second 1099 shall be issued to Brimer in the amount of \$175.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

For the Inflatable Spirit 737, Item No. SWA0052 Products, Crea (USA) Inc. shall pay \$400.00 and for the Spirit PVC Keychain, Item No. SWA 1275 Products the Crea (USA) Inc. shall pay \$400.00, for a total of \$800.00 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). Creacta (USA) Inc. 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 (OEHHA) in the amount of \$600.00, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$200.00, 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 \$600.00. The second 1099 shall be issued to Held in the amount of \$200.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due.

Both payments shall be delivered on or before April 30, 2009, at the following address:

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

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Brimer and Held and their counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Creacta (USA) Inc. shall reimburse Brimer and Held's counsel for fees and costs,

incurred as a result of investigating, bringing this matter to Creacta (USA) Inc.'s attention, and negotiating a settlement in the public interest. For the 12 Oz. Coffee Mug, Item Code SWA 1056, Products Creacta (USA) Inc. shall pay Held and his counsel \$12,000.00 for all attorneys' fees, expert and investigation fees, and related costs for the Inflatable Spirit 737, Item No. SWA0052, Products Creacta (USA) Inc. shall pay Held and his counsel \$7,750.00 for all attorneys' fees, expert and investigation fees, and related costs, for the Spirit PVC Keychain, Item No. SWA 1275, Item No. SWA0052, Products Creacta (USA) Inc. shall pay Held and his counsel \$7,750.00 for all attorneys' fees, expert and investigation fees, and related costs, for a total of \$27,500.00. The payment shall be made payable to Hirst & Chanler LLP and shall be delivered on or before April 30, 2009, at the following address:

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

Creacta (USA) Inc. shall issue a separate 1099 for fees and cost paid in the amount of \$27,500.00 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Release of Creacta (USA) Inc., Upstream Vendors 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, Brimer and Held, on behalf of

themselves, their past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waive 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 Creaata (USA) Inc. and each of their downstream warehouses and warehousers, 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 Creaata (USA) Inc.'s alleged failure to warn about exposures to or identification of the Listed Chemicals contained in the Products.

The Parties further agree that this release shall 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 Creaata (USA) Inc.

Creaata (USA) Inc. may plead this Agreement as a complete defense and bar to any proceedings, actions or suits commenced, continued or taken by the Claimants (or on the Claimants' behalf) in connection with any matters the subject of the Claimants' releases in this Agreement.

**5.2 Creata (USA) Inc.'s Release of Brimer and Held**

Creata (USA) Inc. waives any and all claims against Brimer and Held, their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Brimer, Held and their 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 Creata (USA) Inc. shall provide written notice to Brimer and 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 Crea (USA) Inc.:  
Crea (USA) Inc.  
c/o Mitchel D. Whitehead, Esq.  
Seyfarth Shaw, LLP  
2029 Century Park East, Suite 3300  
Los Angeles, CA 90067-3063

To Brimer and 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)**

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

**11. MODIFICATION**

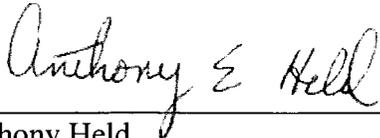
This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. ATTORNEY'S FEES**

In the event a dispute arises with respect to any provision of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

**13. 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>05/01/09</u>	Date: _____
By: <u></u> Anthony Held	By: _____ Creatia (USA) Inc.

**AGREED TO:**

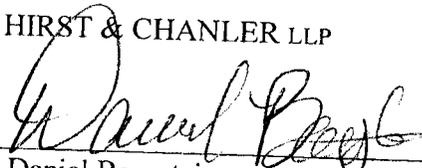
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Russell Brimer

**APPROVED AS TO FORM:**

Date: 5/1/09

HIRST & CHANLER LLP

By:   
Daniel Bornstein  
Attorneys for Anthony Held and Russell Brimer

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_

SEYFARTH SHAW LLP

By: \_\_\_\_\_  
Mitchel D. Whitehead  
Attorneys for Crea (USA) Inc.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>4-70-09</u></p> <p>By:  Russell Brimer</p>	
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">HIRST &amp; CHANLER LLP</p> <p>By: _____ Daniel Bornstein Attorneys for Anthony Held and Russell Brimer</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">SEYFARTH SHAW LLP</p> <p>By: _____ Mitchel D. Whitehead Attorneys for Crea (USA) Inc.</p>

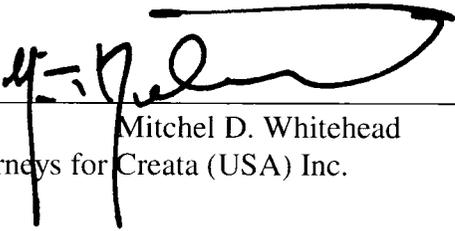
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In the event a dispute arises with respect to any provision of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees incurred in connection with such dispute.

**13. 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: _____	Date: <u>May 1, 2009</u>
By: _____ Anthony Held	By: <u>[Signature]</u> Creatia (USA) Inc.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Russell Brimer</p>	
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">HIRST &amp; CHANLER LLP</p> <p>By: _____ Daniel Bornstein Attorneys for Anthony Held and Russell Brimer</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>5/5/09</u></p> <p style="text-align: center;">SEYFARTH SHAW LLP</p> <p>By:  Mitchel D. Whitehead Attorneys for Crea (USA) Inc.</p>