

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Anthony Held, Cedar Fair, L.P., and Knott's Berry Farm

This Settlement Agreement ("Agreement") is entered into by and among Anthony E. Held, Ph.D., P.E (hereinafter "Held"), Cedar Fair, L.P. and Knott's Berry Farm, including Soak City, Gilroy Gardens and Great America, ("Knott's Berry"), 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. Knott's Berry 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 Knott's Berry has sold in the State of California soft sports balls, vinyl bags and other children's items containing di(2ethylhexyl)phthalate ("DEHP"). The chemical 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. 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: soft sports balls, vinyl bags, ponchos, bracelets, coin purses and other children's items containing the Listed Chemical including, but not limited to: (a) *3 Ball Set Junior Juggling Balls #30847248 (#0 99996 00086 6)*; (b) *Tote Camp Snoopy, SPDTC, #31271604*; (c) *Child Poncho, #32225799*; (d) *Plugs Bracelet, #30578785 (#7 55545 05268 6)*; (e) *14" Built For Speed Race Car #32534455 (#7 95136 01844 8)* and (f) *Snoopy Coin Purse #32570814*. All such items shall be referred to herein as the "Products."

#### **1.4 Notice of Violation**

On or about August 14, 2008, and December 23, 2008, Held served Knott's Berry and various public enforcement agencies with documents entitled "60-Day Notice of Violation" and "Supplemental 60-Day Notice of Violation" ("Notices") that provided Knott's Berry and such public enforcers with notice that alleged that Knott's Berry was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products that Knott's Berry sold exposed users in California to the Listed Chemical.

#### **1.5 No Admission**

Knott's Berry denies the material factual and legal allegations contained in Held's Notice 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 Agreement shall be construed as an admission by Knott's Berry of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Knott's Berry of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Knott's Berry. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Knott's Berry under this Agreement.

#### **1.6 Effective Date**

For purposes of this Agreement, the term "Effective Date" shall mean March 2, 2009.

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

#### **2.1 Reformulation Commitment**

As of the Effective Date, Knott's Berry shall only sell Products in California that are Phthalate Free, as set forth below. For purposes of this 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.

Knott's Berry hereby commits that at least 90% of the Products that it offers for sale in California after the Effective Date shall be Phthalate Free, with the remaining up to 10% of the

Products containing the warnings set forth in Sections 2.2 through 2.3, or otherwise be exempt from the warning requirements as set forth in Section 2.4.

## **2.2 Product Warnings**

After the Effective Date, Knott's Berry shall not sell, or offer to sell, in California, Products containing the Listed Chemical unless such Products are sold with the clear and reasonable warnings set out in Section 2.3 or comply with the reformulation requirements of Phthalate Free Products set out in Section 2.1.

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.

## **2.3 Warnings For Retail Store Sales**

(a) **Product Labeling.** Knott's Berry may perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold in its retail outlets in California by Knott's Berry or its agents, that states:

**WARNING:** This product contains one or more phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm.

(b) **Point-of-Sale Warnings.** Knott's Berry may perform its warning obligations by ensuring that signs are posted at its retail outlets in the State of California where the Products are sold. Point-of-Sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that states:

**WARNING:** This product contains one or more phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Phthalate Free as defined in Section 2.1), the following

statement must be used <sup>1</sup>:

**WARNING:** The following products contain one or more phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

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

The warning requirements set forth in Sections 2.2 through 2.3 shall not apply to:

- (a) Any Products received by Knott's Berry prior to receipt of the Notice, provided that Knott's Berry does not have actual knowledge, or reason from communications with its suppliers of the Products to believe, that Listed Chemicals are present in such Products in concentrations exceeding 1,000 ppm each;
- (b) Any Products purchased by Knott's Berry by its customers before the Effective Date; or
- (c) 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 Agreement, Knott's Berry 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). Knott's Berry 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 \$2,250, representing 75% of the total penalty and (b) one check to Hirst &

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<sup>1</sup> For purposes of this Settlement Agreement, "sold in proximity to other like items" shall mean that the Product and another product are offered for sale close enough to each other so that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

Chanler LLP in Trust for Held in the amount of \$750 representing 25% of the total penalty. The payment shall be delivered on or before March 2, 2009, to the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
Capitol Mall Complex  
455 Capitol Mall, Suite 605  
Sacramento, CA 95814

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 Knott's Berry's counsel no later than March 2, 2009.

**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 Knott's Berry shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to the attention of Knott's Berry, and negotiating a settlement in the public interest. Knott's Berry 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 March 2, 2009, to the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
Capitol Mall Complex  
455 Capitol Mall, Suite 605  
Sacramento, CA 95814

**5. RELEASE OF ALL CLAIMS**

**5.1 Held's Release of Knott's Berry**

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 Knott's Berry and any 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 Knott's Berry'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 him 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 Knott's Berry.

## **5.2 Knott's Berry's Release of Held**

Knott's Berry 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 Knott's Berry shall provide written notice to Held of any asserted change in the law, and shall they have no further obligations pursuant to this 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 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 Knott's Berry:

Jeffrey M. Lenkov, Esq.  
Manning & Marder, Kass, Ellrod, Ramirez LLP  
801 South Figueroa Street  
15th Floor at 801 Tower  
Los Angeles, CA 90017

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 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 Agreement on behalf of their

respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> Anthony Held, Ph.D., P.E.</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Knott's Berry Farm</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Clifford Chanler Attorneys for Anthony Held, Ph.D., P.E.</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>MANNING &amp; MARDER KASS, ELLROD, RAMIREZ LLP</p> <p>By: _____ Jeffrey M. Lenkov Martin Kosla Attorneys for Cedar Fair, L.P. and Knott's Berry Farm</p>

respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

<b>AGREED TO:</b> Date: _____ By: _____ Anthony Held, Ph.D., P.E.	<b>AGREED TO:</b> Date: <u>February 13, 2009</u> By: <u>Kathy Hawke</u> Knott's Berry Farm
<b>APPROVED AS TO FORM:</b> Date: _____ HIRST & CHANLER LLP By: _____ Clifford Chanler Attorneys for Anthony Held, Ph.D., P.E.	<b>APPROVED AS TO FORM:</b> Date: _____ MANNING & MARDER KASS, ELLROD, RAMIREZ LLP By: _____ Jeffrey M. Lenkov Martin Kosla Attorneys for Cedar Fair, L.P. and Knott's Berry Farm