

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Rhode Island Novelty, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Held"), and Rhode Island Novelty, Inc. (hereinafter "RI Novelty"), with Held and RI Novelty collectively referred to as the "Parties." Held is an individual residing in California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. RI Novelty employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (hereinafter "Proposition 65").

1.2 General Allegations

Held alleges that RI Novelty manufactured, distributed and/or sold in the State of California vinyl rubber ducks and inflatable vinyl toys containing di(2-ethylhexyl) phthalate (hereinafter "DEHP") without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP shall be referred to hereinafter as the "Listed Chemical."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: vinyl rubber ducks and inflatable toys containing DEHP, including, but not limited to the *Rubber Ducky, Item RD-DUCRU (#0 97138 61456 8)* and the *33" Saxophone Inflate, Item #IN-SAX33 (#0 97138 60029 5)*. All such items shall be referred to herein as the "Products".

1.4 Notice of Violation

On October 3, 2008, Held served RI Novelty and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (hereinafter "Notice") that provided RI Novelty and such public enforcers with notice that alleged that RI Novelty was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical.

1.5 No Admission

RI Novelty denies the material, factual and legal allegations contained in Held's Notice, and maintains that all products that it has manufactured, 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 RI Novelty 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 RI Novelty of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by RI Novelty. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of RI Novelty under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 13, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

As of the Effective Date, RI Novelty represents that it will not sell, ship or offer to be shipped for sale in the State of California Products unless such Products are shipped with the clear and reasonable warnings set out in this Section or comply with the reformulation requirements of Phthalate Free Products set out in Section 2.3.

In the event that non-reformulated Products are sold, shipped or offered to be shipped for sale in California after the Effective Date by RI Novelty, such Products shall be sold or shipped with one of the clear and reasonable warnings set forth in subsection 2.1(a) of this Settlement Agreement.

Each warning 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 use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

(a) Retail Store Sales.

(i) Product Labeling. RI Novelty may affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by RI Novelty or its agents, that states:

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

(ii) Point-of-Sale Warnings. Alternatively, RI Novelty may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products.

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

(b) Catalogue and Internet Sales.

(i) Catalogue Sales. RI Novelty will institute a policy that no non-reformulated Products will be sold or shipped to any purchaser who has a State of

California mailing address or zip code. The purchaser will be notified that, if and to the extent any such non-reformulated Products are included in the order, these Products cannot be sold in the State of California. If, in the future, RI Novelty ships non-reformulated Products to purchasers with a California mailing address and/or zip code, then RI Novelty will include with the shipment of said Products, the warning set forth in Section 2.1 (a) above clearly identifying to the purchaser the Products to which the warning applies.

(ii) Internet Sales. RI Novelty will have a notice posted on its web site that states that products that contain more than 1,000 parts per million of DEHP and other phthalates cannot be sold in California. Further, RI Novelty will implement software modifications to its web site, to prevent any customer with a California address or zip code from purchasing non-reformulated Products. If, in the future, RI Novelty ships non-reformulated Products to purchasers with a California mailing address and/or zip code, then RI Novelty will include with the shipment of said Products, the warning set forth in Section 2.1 (a) above, clearly identifying to the purchaser the Products to which the warning applies.

2.2 Product Sales Confirmation

RI Novelty represents that, as a direct result of the Notice issued by Held on October 3, 2008 it commenced informing its customers located in the State of California that purchased the Products within the last 90 day period of the presence of phthalates in the Products and the requirements of Proposition 65.

2.3 Reformulation Commitment

As of the Effective Date, RI Novelty shall only manufacture or cause to be manufactured Products for sale 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. MONETARY PAYMENTS

In settlement of all claims referred to in this Settlement Agreement, RI Novelty shall pay \$2,500 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 ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). RI Novelty shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of \$1,875 representing 75% of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$625 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:

(a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided prior to payment. Held will cause a W-9 Form with respect to himself to be provided to RI Novelty or RI Novelty's counsel prior to payment.

Payment shall be delivered to Dr. Held's counsel on or before February 13, 2009, at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. RI Novelty then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. RI Novelty shall reimburse Held and his counsel the total of \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to RI Novelty's attention and negotiating a settlement in the public interest. Hirst & Chanler LLP will cause a completed W-9 Form with respect to itself to be provided to RI Novelty or RI Novelty's counsel prior to payment. RI Novelty shall issue a 1099 to Hirst & Chanler LLP for the above fees and costs. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered on or before February 13, 2009 to the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Release of RI Novelty 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, Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and on behalf of the general public to the extent allowed by law, 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 RI Novelty 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 RI Novelty's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products. 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 RI Novelty.

5.2 RI Novelty's Release of Held

RI Novelty 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 them 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. ATTORNEYS' FEES

In the event that, after the execution of this Settlement Agreement: (1) a dispute arises between the Parties with respect to any provision of this Settlement Agreement; (2) RI Novelty seeks modification of this Settlement Agreement; or (3) RI Novelty fails to comply with the terms of the Settlement Agreement and Held takes reasonable and necessary steps to enforce the terms of this Settlement Agreement, Held shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9. 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 RI Novelty 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.

10. 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 RI Novelty:

Steven Rosenbaum
POORE & ROSENBAUM LLP
30 Exchange Terrace
Providence, RI 02903

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.

11. 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.

12. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)

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

13. MODIFICATION

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

14. 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.

AGREED TO:

APPROVED

Date: By Anthony E Held at 2:15 pm, 2/3/09

By: Anthony E. Held
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: _____

By: _____
RHODE ISLAND NOVELTY, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

Date: _____
POORE & ROSENBAUM LLP

By: _____
Christopher M. Martin
Attorneys for
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Steven Rosenbaum
Attorneys for
RHODE ISLAND NOVELTY, INC.

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Date: _____

Date: _____

By: _____
ANTHONY E. HELD, Ph.D., P.E.

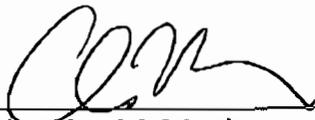
By: _____
RHODE ISLAND NOVELTY, INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 2/3/09
HIRST & CHANLER LLP

Date: _____
POORE & ROSENBAUM LLP

By: 
Christopher M. Martin
Attorneys for
ANTHONY E. HELD, Ph.D., P.E.

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Attorneys for
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Date: _____

By: _____
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 2/13/09

By: 
RHODE ISLAND NOVELTY, INC.

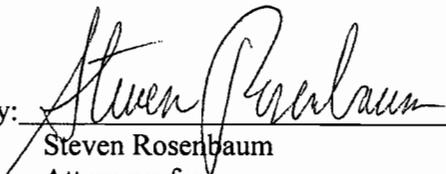
APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

By: _____
Christopher M. Martin
Attorneys for
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

Date: 2/13/09
POORE & ROSENBAUM LLP

By: 
Steven Rosenbaum
Attorneys for
RHODE ISLAND NOVELTY, INC.