

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and Baby Togs Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter “Held”) and Baby Togs, Inc. (hereinafter “Baby Togs”), with Held and Baby Togs 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. Baby Togs 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 Baby Togs has manufactured, distributed and/or sold in the State of California children’s clothing ensembles with shoes containing di(2-ethylhexyl)phthalate (“DEHP”). 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. DEHP is 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 clothing ensembles with shoes containing the Listed Chemical, including, but not limited to, *b.t. kids Denim 3 PC. Set, Style #2042000 (#0 91939 42968 0)*. All such items shall be referred to herein as the “Products.”

1.4 Notice of Violation

On or about November 28, 2008, Held served Baby Togs and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Baby Togs and such public enforcers with notice that alleged that Baby Togs 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 the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Baby Togs 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 Settlement Agreement shall be construed as an admission by Baby Togs 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 Baby Togs of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Baby Togs. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Baby Togs under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean April 15, 2009.

2. REFORMULATION

As of the Effective Date, Baby Togs 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 each of the Listed Chemicals, when analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C, or any method used to measure DEHP content that is accepted by the Consumer Product Safety Commission.

Baby Togs hereby commits that 100% of the Products that it offers for sale in California after the Effective Date shall be Phthalate Free.

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

In settlement of all the claims referred to in this Settlement Agreement against it, Baby Togs shall pay \$2,000 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). Baby Togs 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 \$1,500, representing 75% of the total penalty and (b) one check to “Hirst & Chanler LLP in Trust for A. Held” in the amount of \$500, 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 \$1,500. The second 1099 shall be issued to Held in the amount of \$500, 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, Baby Togs shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Baby Togs' attention, and negotiating a settlement in the public interest. Baby Togs shall pay Held and his counsel \$15,000 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

Baby Togs shall issue a separate 1099 for fees and cost paid in the amount of \$15,000 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Baby Togs 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 Baby Togs 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 Baby Togs' alleged failure to warn about exposures to or identification of DEHP contained in the Products.

The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured component parts for the Products, or any distributors or suppliers that sold component parts thereof to Baby Togs.

5.2 Baby Togs's Release of Held

Baby Togs 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 Baby Togs 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 Baby Togs:

Eddie Sitt, Chief Executive Officer
Baby Togs, Inc.
100 West 33rd Street
New York, NY 10001

With Copies To:

Peg Carew Toledo
Mennemeier, Glassman & Stroud LLP
980 9th Street, Suite 1700
Sacramento, CA 95814

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.

AGREED TO:	AGREED TO:
Date: APPROVED By Anthony E Held at 2:50 pm, 4/13/09 By: <u>Anthony E Held</u> Anthony Held	Date: <u>04/08/09</u> By: <u>David Sitt</u> David Sitt, Vice President Baby Togs, Inc.