

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Anthony Held and FAF Products, Inc.

This Settlement Agreement (“Agreement”) is between Anthony E. Held, Ph.D., P.E. (“Held”) and F.A.F., Inc., (“FAF”), with Held and FAF 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. FAF is a person in the course of doing business within the meaning of California Health & Safety Code §25249.11.

#### 1.2 General Allegations

Held alleges. that FAF has manufactured, distributed and/or sold in the State of California novelty items made from soft plastic containing di(2-ethylhexyl)phthalate including, but not limited to, a product named Butterfly Key Chain, SKU 7 27833 36266. Di(2-ethylhexyl)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. Di(2-ethylhexyl)phthalate shall be referred to as the “Listed Chemical.”

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: novelty items including key chains and jewelry made with soft plastic containing di(2-ethylhexyl)phthalate sold by FAF. All such items shall be referred to herein as the “Products.”

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

On or about December 23, 2008 and February 24, 2009, Held served FAF and various public enforcement agencies with a document entitled “60-Day Notice of Violation” and “Supplemental 60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that alleged that FAF was in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that they sold exposed users in California to the Listed Chemical.

#### **1.5 No Admission**

FAF and the Releasees (defined below in Section 5.1) deny the material factual and legal allegations contained in Held's Notice and maintain that all products it 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 FAF or the Releasees 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 FAF of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by FAF. This Section, however, shall not diminish or otherwise affect the obligations, responsibilities and duties of FAF 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: REFORMULATION**

As of the Effective Date, FAF shall only sell the Products in California if they 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”), which equates to 0.1%, of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C, or other comparable methodologies recognized and accepted by one or more federal and/or state agencies, including the Consumer Product Safety Commission, to determine whether the respective levels have been exceeded in its Products.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE 425249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, FAF shall pay \$6,000 in civil penalties to be apportioned in accordance with California Health & Safety Code section 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 section 25249.12(d). FAF shall issue two separate checks, on or before March 12, 2009, 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 \$4,500, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$1,500 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 \$4,500. The second 1099 shall be issued to Held in the amount of \$1,500, whose address and tax identification number shall be furnished to FAF concurrent with the execution of this Agreement. The payment shall be made payable to Hirst & Chanler, LLP in Trust for Anthony Held and shall be delivered on or before March 12, 2009, to the following address:

Proposition 65 Controller  
Hirst & Chanler, LLP  
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 FAF has reimbursed Held's counsel for its fees and costs, incurred as a result of investigating, bringing this matter to FAF's attention, and negotiating a settlement in the public interest. FAF shall pay Held and his counsel \$26,500 for all attorneys' fees, expert and investigation fees, and related costs. FAF shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before March 12, 2009, to the following address:

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

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of FAF and All Downstream Customers**

In further consideration of the promises and agreements contained in this Agreement, 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 (collectively, "Held"), 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 FAF and each of its 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, successors and assigns, and customers including, but not limited to, Wal-Mart Stores, Inc. ("Wal-Mart), and Wal-Mart's affiliates and/or subsidiaries (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to FAF's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

#### 5.1.1 Held's General Release of FAF

Held, in his individual capacity only and not in his representative capacity, releases and forever discharges Releasees from any and all Claims known or unknown, suspected or unsuspected. 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 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held expressly waives and relinquishes any and all rights and benefits under or that may be conferred 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, these releases 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.

**5.2 FAF's Release of Held**

FAF 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 FAF 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:

To FAF:

Lou Rotella  
Chief Financial Officer  
FAF, Inc.  
26 Lark Industrial Parkway  
Greenville, RI 02828

and,

Robert D. Wyatt, Esq.  
Allen Matkins Leck Gamble Mallory and Natsis, LLP  
Three Embarcadero Center  
Suite 1200  
San Francisco, CA 94111

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.

## **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 California Health & Safety Code section 25249.7(f).

**11. MODIFICATION**

This 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 Agreement.

AGREED TO:	AGREED TO:
Date: <u>3/4/09</u>	Date: _____
By: <u><i>Anthony E Held</i></u> Anthony Held	By: _____ Lou Rotella, Chief Financial Officer FAF, Inc.

**11. MODIFICATION**

This 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 Agreement.

AGREED TO:	AGREED TO:
Date: _____	Date: <u>3/4/09</u>
By: _____ Anthony Held	By:  Lou Rotella, Chief Financial Officer FAF, Inc.