

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Anthony Held and Poof-Slinky, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter "Held") and Poof-Slinky, Inc. (hereinafter "Poof-Slinky"), with Held and Poof-Slinky 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. Poof-Slinky 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 Poof-Slinky has manufactured, distributed and/or sold in the State of California children's vinyl bags containing di(2-ethylhexyl)phthalate ("DEHP"). Held further informed Poof-Slinky that he believes the company manufactured, distributed and/or sold in the State of California certain children's toys with plastic/vinyl components containing DEHP and that these components of such toys and certain zipper pulls attached to some of the children's vinyl bags sold by Poof-Slinky also contain lead. DEHP and lead are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as chemicals known to the State of California to cause birth defects and other reproductive harm. DEHP and lead are referred to herein as the "Listed Chemicals."

1.3 Product Description

The products that are covered by this Settlement Agreement are defined, as follows:
children's vinyl bags and children's toys with vinyl components containing the Listed

Chemicals including, but not limited to, *Slinky Brand Backpack Party Set, No. 7000 (#071547 07000 9)*, and *Wind-Up Slinky Dog, No. 2252 (#071547022527)*. All such items are referred to herein as the "Products."

1.4 Notice of Violation

On or about January 26, 2009, Held served Poof-Slinky, Rite Aid Corporation and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Poof-Slinky and such public enforcers with notice that alleged that Poof-Slinky was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that children's vinyl bags sold by Poof-Slinky exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission

Poof-Slinky 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 Poof-Slinky 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 Poof-Slinky of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Poof-Slinky. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Poof-Slinky 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

2.1 Reformulation Commitment

As of the Effective Date, Poof-Slinky shall only offer for sale in California Products that are Phthalate Free and Lead 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 DEHP, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C. "Lead Free" Products shall mean Products containing components reasonably accessible to the user that have less than 300 ppm lead when analyzed pursuant to EPA method 3050B. Products that are both Lead Free and Phthalate Free are referred to hereinafter as "Reformulated Products."

2.2 Previously Manufactured Products

Poof-Slinky hereby represents and warrants that, prior to the Effective Date, it has notified and advised all of its customers doing business in California to withdraw from sale and return to Poof-Slinky all Products that Held or Held's counsel have alleged or provided Poof-Slinky with reason to believe are not Reformulated Products.

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

In settlement of all the claims referred to in this Settlement Agreement against it, Poof-Slinky shall pay \$6,000 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). Poof-Slinky 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 \$4,500

representing 75% of the total penalty and (b) one check to "Hirst & Chanler LLP in Trust for A. 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, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before five days after the Effective Date, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
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 Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Poof-Slinky shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Poof-Slinky's attention, and negotiating a settlement in the public interest. Poof-Slinky shall pay Held and his counsel \$31,000 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 five days after the Effective Date, at the following address:

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

Poof-Slinky shall issue a separate 1099 for fees and cost paid in the amount of \$31,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Release of Poof-Slinky 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 Poof-Slinky and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Rite Aid Corporation), 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 Poof-Slinky's alleged failure to warn about exposures to or identification of DEHP contained in children's vinyl bags.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Poof-Slinky and each of its Releasees. This

additional release, which Held is providing in his individual capacity, is limited to those Claims that arise with respect to Proposition 65, as such Claims relate to Poof-Slinky's alleged failure to warn about exposures to or identification of Listed Chemicals contained in the Products.

The Parties further understand and agree that the above releases 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 Poof-Slinky.

5.2 Poof-Slinky's Release of Held

Poof-Slinky 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 Poof-Slinky 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 Poof-Slinky:

Ray Dallavecchia Jr., President
Poof-Slinky, Inc.
45400 Helm Street
Plymouth, MI 48170

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.

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>4/28/2009</u></p> <p>By: <u><i>Anthony E Held</i></u> Anthony Held</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Ray Dallavecchia Jr., President Poof-Slinky, Inc.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>4/28/09</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u><i>Cliff A Chanler</i></u> Clifford A. Chanler Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">MORRISON & FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendant POOF-SLINKY, INC.</p>

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.

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Anthony Held</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>April 28, 2009</u></p> <p>By: <u>Ray Dallavecchia Jr.</u> Ray Dallavecchia Jr., President Poof-Slinky, Inc.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: _____ Clifford A. Chanler Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>April 30, 2009</u></p> <p style="text-align: center;">MORRISON & FOERSTER LLP</p> <p>By: <u>Robert L. Falk</u> Robert L. Falk Attorneys for Defendant POOF-SLINKY, INC.</p>