

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony E. Held, Ph.D., P.E., and Franco Manufacturing Co., Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (hereinafter "Held"), and Franco Manufacturing Co., Inc. (hereinafter, "Franco"), with Held and Franco 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. Franco 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 Franco has manufactured, distributed and/or sold in the State of California pillows with vinyl components containing Di(2-ethylhexyl)phthalate and vinyl placemats containing Di(2-ethylhexyl)phthalate. 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 is referred to herein as the "Listed Chemical."

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as pillows with

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vinyl components containing the Listed Chemical including, but not limited to: *Nick Jr. G, Diego, Go! Decorative Pillow* (#0 73558 49690 8), *Finding Nemo Pillow*; and various placemats including, *Placemat, Superman, #162VAA* (#0 73558 59369 0), *Placemat, The Dark Knight, #59VPP* (#0 73558 59369 0), *Placemat, Go Diego Go! Animal Rescue #102UPP* (#0 73558 55034 1). All such items shall be referred to herein as the "Products."

**1.4 Notices of Violation**

On December 23, 2008, Held served Franco and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Franco and such public enforcers with notice that alleged that Franco was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the pillow with vinyl component products exposed users in California to the Listed Chemical. On September 15, 2009, Held served Franco and various public enforcement agencies with a "Supplemental 60-Day Notice of Violation" (the "Supplemental Notice") that provided Franco and such public enforcers with notice related to the remaining placemat products (collectively referred to as the "Notices.") No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Franco denies the material factual and legal allegations contained in Held's Notices 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 Franco 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

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

**1.6 Effective Date**

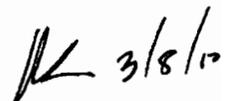
For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 1, 2010.

**2. INJUNCTIVE RELIEF – REFORMULATION**

As of the Effective Date, Franco 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" shall mean products containing less than or equal to 1,000 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

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

In settlement of all the claims referred to in this Settlement Agreement, Franco shall pay \$4,000 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). Franco shall issue two separate checks for the penalty payment: (a) one check made payable to Chanler Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Chanler Law

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Group in Trust for OEHHA”) in the amount of \$3,000 representing 75% of the total penalty and (b) one check to “Chanler Law Group in Trust for Held” in the amount of \$1,000 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). The second 1099 shall be issued to Held, 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 March 31, 2010, at the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**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 contract law. Under these legal principles, Franco shall reimburse Held’s counsel for fees and costs incurred as a result of investigating, bringing this matter to Franco’ attention, and negotiating a settlement in the public interest. Franco shall pay Held and his counsel \$26,000 for all attorneys’ fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to “Chanler Law Group” and shall be delivered on or before March 31, 2010, at the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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Franco shall issue a separate 1099 for fees and cost paid to Chanler Law Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

5. **RELEASE OF ALL CLAIMS**

5.1 **Release of Franco 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, including, without limitation, Chanler Law Group, 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 Franco 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 "Franco Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Franco' alleged failure to warn about exposures to or identification of DEHP contained in the Products.

**Compliance with the terms of this Consent Judgment resolves any issue, now and in the**

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future, concerning compliance by Franco and Franco Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by Franco.

Dr. Held in his individual capacity on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assigns, and *not* his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims which he now has or may have in the future against Franco , irrespective of the subject matter, of all character, kind and nature, whether said claims are known or unknown or are suspected or unsuspected and Dr. Held expressly waives any and all rights and benefits which he now has, or in the future may have, under California Civil Code § 1542, 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.**

It is expressly agreed and understood that the general release by Dr. Held of Franco is a determinative consideration of Franco's willingness and decision to enter into this Settlement Agreement.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Franco or the Releasees under Proposition 65 as covered under this release. If requested in writing by Franco (within twelve months of the Effective Date), Held shall file a complaint and seek approval of this Settlement

Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law, and Held shall reasonably cooperate with Franco and use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, Franco will reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$10,000. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by Franco to have Held file a complaint and seek a consent judgment. Franco will remit payment to Chanler Law Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Franco within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

**5.2 Franco' Release of Held**

Franco 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

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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 Franco 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. Nothing in this Settlement Agreement shall be interpreted to relieve Franco from any obligation to comply with any pertinent state or federal toxics control law.

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 Franco:

Michael Kaplan, Chief Financial Officer  
Franco Manufacturing Co., Inc.  
555 Prospect Street  
Metuchen, NJ 08840

With copies to:

James C. Chen  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Handwritten signature and date: "JK 3/5/10". The signature is in black ink and appears to be initials "JK" followed by the date "3/5/10".

For Held:

Proposition 65 Coordinator  
Chanler Law Group  
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.

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Anthony E. Held, Ph.D., P.E.

**AGREED TO:**

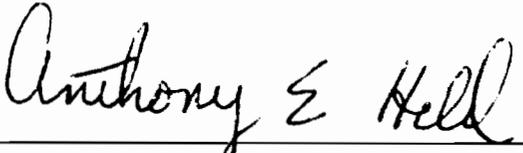
Date: 3/8/10

By:   
Michael Kaplan, Chief Financial Officer  
Franco Manufacturing Co., Inc.

*Handwritten initials and date: VE 3/8/10*

**AGREED TO:**

Date: 3/10/2010

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

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Kaplan, Chief Financial Officer  
Franco Manufacturing Co., Inc.