

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and The ERGO Baby Carrier, Inc. and its affiliates, including without limitation, Orbit Baby, Inc. (collectively referred to herein as “ErgoBaby”), with Held and ErgoBaby each referred to individually as a “Party” and collectively 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 in consumer and commercial products. ErgoBaby 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 and Safety Code section 25249.6 et seq. (“Proposition 65”).

#### 1.2 General Allegations

Held alleges that ErgoBaby manufactures, imports, sells and/or distributes for sale in California, upholstered bassinets with foam padding containing tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) without providing the health hazard warning required by Proposition 65. TDCPP is a flame retardant chemical used in both soft and rigid polyurethane foam, plastics and fabric backings. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a known carcinogen. TDCPP became subject to the “clear and reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

#### 1.3 Product Description

The products covered by this Settlement Agreement are upholstered bassinets with foam padding that are sold or distributed for sale in California by ErgoBaby (“Products”). This includes, but is not limited to, the *Orbit Baby Bassinet Cradle G2, ORB862000M, UPC #8 98618 00138 6* (“Exemplar Product”) identified as a non-exclusive exemplar on Held’s 60-day notice of violation.

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

On December 13, 2013, Held served ErgoBaby, and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that ErgoBaby violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to TDCPP. To the best of the Parties’ knowledge, no public enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

ErgoBaby denies the material, factual, and legal allegations contained in the Notice. Nothing in this Settlement Agreement shall be construed as an admission by ErgoBaby of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ErgoBaby of any fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect ErgoBaby’s obligations, responsibilities, or duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, “Effective Date” shall mean June 6, 2014.

## **2. INJUNCTIVE REQUIREMENTS**

Commencing on the Effective Date and continuing thereafter, ErgoBaby agrees that it will only manufacture for sale or purchase for sale in California, Products that contain “No Detectable Amount” of TDCPP (the “Listed Chemical Flame Retardant”) in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence or absence of, or to measure the amount of, the Listed Chemical Flame Retardant in a solid substance. “No Detectable Amount,” for the purposes of this Settlement Agreement, shall mean the Product’s foam padding contains no more than 25 parts per million of the Listed Chemical Flame Retardant when tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or

equivalent methodologies utilized by a laboratory accredited by the State of California or a federal agency.

To the extent it has not already done so, within thirty days of the Effective Date, ErgoBaby shall notify each of its vendors of Products or foam padding used in Products of the above requirements regarding the Listed Chemical Flame Retardant. In addition, and also to the extent it has not already done so, ErgoBaby agrees to require each such vendor provide it with written certification that the Products or foam padding that it supplies to ErgoBaby comply with the content limits established by this Settlement Agreement for Listed Chemical Flame Retardant.

### **3. MONETARY PAYMENTS**

#### **3.1 Civil Penalties**

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims alleged in the Notice and referred to in this Settlement Agreement, ErgoBaby shall pay \$10,500 in civil penalties, consisting of the initial and final civil penalty referenced in Sections 3.1.1 and 3.1.2, respectively. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty retained by Held.

**3.1.1 Initial Civil Penalty.** Within five business days of the Effective Date, ErgoBaby shall make an initial civil penalty payment of \$3,500.

**3.1.2 Final Civil Penalty.** On or before July 11, 2014, ErgoBaby shall pay a final civil penalty of \$7,000. Held agrees, however, that the final civil penalty will be waived in its entirety if on or before June 20, 2014, ErgoBaby provides Held’s counsel with written certification that commencing on the date of the certification and continuing thereafter, ErgoBaby will only ship for sale or distribute for sale in California Products that contain No Detectable Amount of the Listed Chemical Flame Retardant in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies

utilized by a laboratory accredited by the State of California or a federal agency. The specific form of the written certification to be provided by ErgoBaby is attached hereto as Exhibit A. The option to provide written certification of the Product formulation in lieu of making the final civil penalty payment required by this Settlement Agreement is a material term, and with regard to such term, time is of the essence.

### **3.2 Representations**

ErgoBaby represents that the information regarding its knowledge of TDCPP, the Products, and its compliance efforts, provided to Held are truthful to the best of its knowledge and constitute material factors upon which Held has relied to determine the civil penalties assessed under this Settlement Agreement. If, within nine months of the Effective Date, Held discovers and presents to ErgoBaby, evidence demonstrating that the preceding representations and warranties are materially inaccurate, then ErgoBaby and Held shall meet and confer for no less than 30 days in an effort to address and/or correct the facts surrounding Held's contentions as to the accuracy of its representations. Should the 30-day period conclude without the Parties having resolved Held's contentions, then Held may file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

### **3.3 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, ErgoBaby expressed a desire to resolve Held's fees and costs. Under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, the Parties negotiated ErgoBaby's reimbursement of Held's attorneys' fees and costs. Under their agreement, ErgoBaby agrees to pay Held and his counsel \$19,500 for all work performed through the mutual execution of this Settlement Agreement, including all fees and costs incurred as a result of investigating, bringing this matter to ErgoBaby's attention, and negotiating a settlement in the public interest.

**3.4 Payment Procedures.** The payments under Sections 3.1.1 and 3.3 of this Settlement Agreement are due within five business days of the Effective Date.

**3.4.1 Payment Addresses**

(a) All payments and tax documentation owed to Held and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments and tax documentation owed to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Check Memo line “Prop. 65 Penalties”) at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery or Courier:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.4.2 Proof of Payment to OEHHA**

A copy of the check for each penalty payment to OEHHA shall be enclosed with ErgoBaby’s penalty payment(s) to Held.

**3.4.3 Tax Documentation**

ErgoBaby shall issue a separate 1099 form for each of the following payees: (a) Anthony E. Held, Ph.D., P.E., whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties; (b) the California “Office of Health Hazard Assessment” (EIN: 68-0284486); and (c) “The Chanler Group” (EIN: 94-3171522).

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Held's Release of Proposition 65 Claims**

Held, acting on his own behalf and on behalf of his attorneys and other representatives, hereby release ErgoBaby and its parents, subsidiaries, affiliated entities under common ownership (including, but not limited to, Orbit Baby, Inc.), its directors, officers, agents employees, attorneys, and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65, alleging a failure to warn about exposures to TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice.

Held, on his own behalf and on behalf of his attorneys and other representatives, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in Products sold or distributed for sale by ErgoBaby. The Parties further understand and agree that the releases provided under this Settlement Agreement shall not extend upstream to any entity that manufactures the Products, or any component parts thereof, or any distributor or supplier who sold the Products, or any component parts thereof to ErgoBaby.

##### **4.2 ErgoBaby's Release of Held**

ErgoBaby, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held and 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 to enforce Proposition 65 against it in this matter with respect to the Products.

**5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twenty-four months of the execution of this Settlement Agreement, ErgoBaby may send Held a written request, asking that he file a complaint in the public interest, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and seek the court's approval and entry of consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Held and ErgoBaby agree to reasonably cooperate, to use their best efforts and that of their counsel to support and obtain the entry of this Settlement Agreement as a consent judgment by a superior court in California in a timely matter. If so requested, pursuant to Code of Civil Procedure sections 1021 and 1021.5, ErgoBaby agrees to reimburse Held and his counsel for their reasonable fees and costs incurred in connection with work performed under this Section, in an amount not to exceed \$15,000, exclusive of fees and costs incurred on appeal, if any. ErgoBaby further agrees to remit payment to the address provided in Section 4.4.1(a) within ten days of receiving an invoice from Held's counsel for work performed under this Section.

**6. SEVERABILITY**

If, subsequent to the Parties' execution of this Settlement Agreement, any term is held by a court to be unenforceable, the validity of the remaining provisions 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then ErgoBaby may provide written notice to Held of its 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 ErgoBaby from any obligation to comply with any pertinent state or federal law or regulation.

**8. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To ErgoBaby:

Charles Pak, General Counsel  
The ERGO Baby Carrier, Inc.  
888 South Figueroa, Suite 2050  
Los Angeles, CA 90017

With a copy to:

Michael Sanders, Chief Operating Officer  
The ERGO Baby Carrier, Inc.  
888 South Figueroa, Suite 2050  
Los Angeles, CA 90017

And:

Leila C. Bruderer, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814

To Held:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other 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 or portable document format (.pdf) signature, each of which shall be deemed as valid as an original, and all of which, when taken together, shall constitute one and the same document.



10. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. **MODIFICATION**

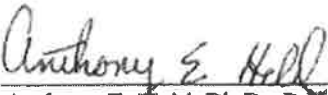
This Settlement Agreement may be modified only by written agreement of the Parties.

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.

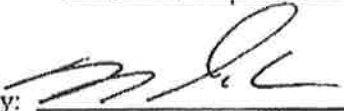
**AGREED TO:**

Dated: June 5, 2014

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

**AGREED TO:**

Dated: 6/3/14

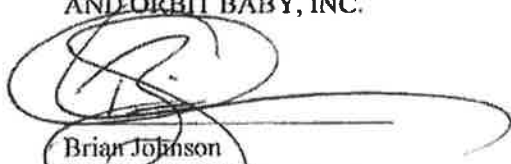
By:   
Michael Sanders, Chief Operating Officer  
THE ERGO BABY CARRIER, INC.  
AND ORBIT BABY, INC.

**APPROVED AS TO FORM:**

Dated: 6/3/14

  
Leila Bruderer  
DOWNEY BRAND LLP  
On behalf of THE ERGO BABY CARRIER, INC.  
AND ORBIT BABY, INC.

Dated: 6/6/14

  
Brian Johnson  
THE CHANLER GROUP  
On behalf of Anthony E. Held, Ph.D., P.E.

**EXHIBIT A**  
**CERTIFICATION**

Reference is made to the Settlement Agreement (the "Agreement"), dated as of June 6, 2014, by and between Anthony E. Held, Ph.D., P.E. and The ERGO Baby Carrier, Inc. (the "Company"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Pursuant to Section 3.1.2 of the Agreement, as of the date indicated below, the Company hereby certifies that:

The Company will only ship for sale or distribute for sale in California Products that contain No Detectable Amount of the Listed Chemical Flame Retardant in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies utilized by a laboratory accredited by the State of California or a federal agency.

Dated: June 20, 2014

By: \_\_\_\_\_

Name: MICHAEL SANDERS  
Title: COO