

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony E. Held, Ph.D., P.E., and Accessory Innovations, LLC

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and Accessory Innovations, LLC (“Accessory Innovations”), with Held and Accessory Innovations collectively referred to as the “Parties.” Dr. Held is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Accessory Innovations 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 & Safety Code § 25249.6, *et seq.* (Proposition 65).

### 1.2 General Allegations

Dr. Held alleges that Accessory Innovations has manufactured, distributed and/or offered for sale children’s backpacks which contain phthalates, including di(2-ethylhexyl)phthalate (hereinafter the “Listed Chemical”), without the requisite Proposition 65 warnings. The Listed Chemical is on the Proposition 65 list as a chemical known to cause cancer as well as birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: children’s backpacks containing the Listed Chemical such as, but not limited to, *Sesame Street Nap Mat, Style #03E621L (#8 743340 00201 9)*. All such children’s backpacks containing the Listed Chemical are referred to hereinafter as the “Products”.

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

On or about February 12, 2010, Dr. Held served Accessory Innovations and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Accessory Innovations and public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Accessory Innovations sold exposed users in California to the Listed Chemical. To the best of the parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Accessory Innovations denies the material, factual and legal allegations contained in Dr. 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 Accessory Innovations 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 Accessory Innovations of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Accessory Innovations. However, this section shall not diminish or otherwise affect Accessory Innovations’ obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 28, 2010.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Commitment**

As of the Effective Date, Accessory Innovations 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 the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

Accessory Innovations commits that 100% of the Products that it offers for sale in California after May 28, 2010 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, Accessory Innovations 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 ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held, Ph.D., P.E., as provided by California Health & Safety Code § 25249.12(d). Accessory Innovations shall issue two separate checks for the penalty payment: (a) one check made payable to "Chanler Law Group in Trust For OEHHA" in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "Chanler Law Group in Trust for Anthony Held" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, Ph.D., P.E., whose information shall be provided five (5) calendar days before the payment is due.

Payment shall be delivered to Dr. Held's counsel by May 28, 2010 at the following address:

Chanler Law Group  
Attn: Proposition 65 Coordinator  
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 Dr. Held and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Accessory Innovations shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Accessory Innovations' attention, and negotiating a settlement in the public interest. Accessory Innovations shall pay Dr. Held and his counsel \$16,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made in equal installments of \$4,000 each, in separate checks made payable to "Chanler Law Group," and delivered by each of June 15, 2010, July 15, 2010, August 15, 2010, and September 15, 2010, to the following address:

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

Accessory Innovations shall issue a separate 1099 for attorney's fees and costs paid in the amount of \$16,000 to Chanler Law Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California 94710 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Dr. Held's Release of Accessory Innovations**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself and in his representative capacity, and on behalf of 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 attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Accessory Innovations and each of its wholesalers, licensors, licensees, auctioneers, retailers, distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, affiliates, partners, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such Claims relate to any alleged failure by Accessory Innovations to warn about exposures to the Listed Chemical contained in the Products.

**5.2 Accessory Innovations' Release of Dr. Held**

Accessory Innovations, on behalf of itself and its Releasees, waives any and all claims against Dr. Held, his attorneys, and other representatives for any and all actions taken by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them 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 Accessory Innovations may provide written notice to Dr. 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 Accessory Innovations:

Ralph Dweck  
Accessory Innovations, LLC  
10 East 34<sup>th</sup> Street  
New York, NY 10016

To Dr. 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 or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be as valid as the original.

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

Dr. Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 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.

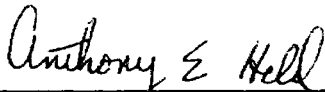
AGREED TO:

**APPROVED**

*By Tony Held at 7:02 am, May 03, 2010*

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

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




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

AGREED TO:

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

*4/29/2010*

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



Ralph Dweck, President  
Accessory Innovations, LLC