

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony Held And Ja-Ru, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E (hereinafter "Held") and Ja-Ru, Inc., (hereinafter "Ja-Ru"), with Held and Ja-Ru 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. Ja-Ru 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 Ja-Ru has manufactured, distributed and/or sold in the State of California sporting toys/children's items containing di(2ethylhexyl)phthalate including, but not limited to, the Little Pro Baseball Sports Bag with bat, ball and glove, No 1105 (#0 75656 01105 2). Di(2ethylhexyl)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(2ethylhexyl)phthalate shall be referred to herein as the "Listed Chemical."

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined, as follows: children's toys containing di(2ethylhexyl)phthalate including, but not limited to, the products identified in Exhibit A to this Settlement Agreement. All such items shall be referred to herein as

the "Products "

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

On or about January 11, 2008, Held served Ja-Ru and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Ja-Ru and such public enforcers with notice that alleged that Ja-Ru was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

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

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 1, 2008.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

### **2.1 Reformulation Commitment**

As of the Effective Date, Ja-Ru 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

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

In settlement of all the claims referred to in this Settlement Agreement against it, Ja-Ru shall pay \$500.00 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). Ja-Ru 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 (OEHHA) in the amount of \$375.00, representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$125.00, 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 \$375.00. The second 1099 shall be issued to Held in the amount of \$125.00, whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due. The payments shall be delivered on or before July 1, 2008, at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
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, Ja-Ru shall reimburse Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Ja-Ru attention, and negotiating a settlement in the public interest. Ja-Ru shall pay Held and his counsel \$10,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before July 1, 2008, at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
Capitol Mall Complex  
455 Capitol Mall, Suite 605  
Sacramento, CA 95814

Ja-Ru shall issue a separate 1099 for fees and cost paid in the amount of \$10,000.00 to Hirst & Chanler LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

5. **RELEASE OF ALL CLAIMS**

5.1 **Release of Ja-Ru 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 Ja-Ru 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 "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Ja-Ru's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Products.

The Parties further understand and agree that this release 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 Ja-Ru.

## **5.2 Ja-Ru Release of Held**

Ja-Ru 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 Ja-Ru 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 Ja-Ru:

Russell Selevan, Vice President  
Ja-Ru, Inc.  
4030 Phillips Highway  
Jacksonville, FL 32207

To Held:

Proposition 65 Controller  
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.

**13. ADVICE OF ATTORNEY**

Ja-Ru acknowledges that Held and his counsel have encouraged Ja-Ru to seek the advice of an attorney with regard to this settlement. Ja-Ru's signature on this agreement affirms that Ja-Ru has sought the advice of an attorney with respect to this agreement or has knowingly, intelligently and voluntarily waived its right to do so

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>12/30/08</u></p> <p>By: <u>Anthony E Held</u> Anthony Held</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>6/16/08</u></p> <p>By: <u>Russell Selevan</u> Russell Selevan, Vice President Ja-Ru, Inc.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>6/5/08</u></p> <p style="text-align: center;">HIRST &amp; CHANLER LLP</p> <p>By: <u>Daniel Bornstein</u> Daniel Bornstein Attorneys for Anthony Held</p>	



**EXHIBIT A**

The Products covered by this Settlement Agreement are Sporting Toys/Children's Items containing Di(2-ethylhexyl)phalate including, but not limited to, the Little Pro Baseball Sports Bag with bat, ball and glove, No. 1105 (#0 75656 01105 2)