

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony E. Held, Ph.D., P.E., and MVP Group International, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (hereinafter “Held”), and MVP Group International, Inc. (hereinafter, “MVP”), with Held and MVP collectively referred to as the “Parties.”

### 1.2 General Allegations

Held asserts that he 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. MVP employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

Held alleges that MVP has manufactured, distributed and/or sold in the State of California votive holders with colored artwork or designs containing lead. Lead 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 cancer and birth defects and other reproductive harm. Lead is referred to herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as votive holders with colored artwork or designs containing the Listed Chemical including, but not limited to: *Scented Votives Gift Set (#6 65098 84355 9)*. All such items shall be referred to herein as the

“Products.”

**1.4 Notices of Violation**

On September 30, 2009, Held served MVP and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided MVP and such public enforcers with notice that alleged that MVP 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 Lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

MVP denies the material factual and legal allegations contained in Held’s Notice and maintain that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and that MVP did not knowingly and/or intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity under Cal. Health & Safety Code § 25249.6. Nothing in this Settlement Agreement shall be construed as an admission by MVP 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 MVP of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by MVP. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of MVP under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean

December 31, 2009.

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

### 2.1 **Product Warnings**

Commencing on the Effective Date, MVP shall not sell, ship, or offer to be shipped for sale in California any Product unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

#### (a) **Retail Store Sales.**

(i) **Product Labeling.** MVP may affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Shalom or its agents, that states:

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, MVP may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products.

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:<sup>1</sup>

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that MVP sells Products via mail order catalog or internet to customers located in California after the Effective Date that are not Reformulated Products, MVP shall provide a warning for Products sold via mail order catalog or the Internet to California residents: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

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<sup>1</sup> For purposes of this settlement agreement, “sold in proximity” shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, MVP may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, MVP must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If MVP elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

**(ii) Internet Website Warning.** A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be

used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

**WARNING:** Products identified on this page with the following symbol contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm: ▼.

## **2.2 Exceptions To Warning Requirements**

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any Product manufactured by MVP prior to the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

## **2.3 Reformulation Standards**

Reformulated Products are defined as those Products containing less than or equal to 300 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

## **2.4 Reformulation Commitment**

MVP hereby commits that one hundred percent (100%) of the Products that it manufactures after the Effective Date, for sale in California, shall qualify as Reformulated Products.

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

In settlement of all the claims referred to in this Settlement Agreement, MVP 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). MVP 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 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 December 31, 2009, 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, MVP shall reimburse Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to MVP's attention, and negotiating a settlement in the public interest. MVP shall pay Held and his counsel \$22,500 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 December 31, 2009, at the following address:

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

MVP 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: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of MVP 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 MVP and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including **Big Lots, Inc., and Big Lots Stores, Inc.**), 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 "MVP Releasees"). This release is limited to those claims that arise under Proposition 65, or are contingent upon violations of Proposition 65, as such claims relate to MVP's alleged failure to warn about exposures to or identification of lead contained in the Products.

#### **5.2 MVP's Release of Held**

MVP 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 MVP 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 MVP 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 MVP:

Troy Propes, President  
Jud Woody, Esq., General Counsel  
MVP Group International, Inc.  
1031 Legrand Boulevard  
Charleston, SC 29492

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.

**AGREED TO:**

**APPROVED**

By Anthony Held at 10:24 am, Dec 22, 2009

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

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

**AGREED TO:**

Date: 12/21/09

By: [Signature]  
Jud Wooddy, Esq.  
General Counsel  
MVP Group International, Inc.