

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony Held (“Held”) and Arrow Plastic Manufacturing Co. (“Arrow”), with Held and Arrow 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. Arrow 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

Held alleges that Arrow manufactures, distributes, and/or sells in California glassware with colored artwork or designs on the exterior containing lead without warning in violation of Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the state of California to cause 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 follows: glassware with colored artwork or designs on the exterior containing lead that are manufactured, imported, distributed, and/or sold in California by Arrow, including, but not limited to, the *4 oz. Measuring Glass, #835 (#0 70652 00835 8)* (hereinafter “Products”).

### 1.4 Notice of Violation

On or about September 1, 2011, Held served Arrow and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients that Arrow was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

Arrow denies the material, factual, and legal allegations contained in Held's Notice and maintains that all of the products it sold 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 Arrow of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Arrow of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Arrow. This section shall not, however, diminish or otherwise affect Arrow's obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 1, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION**

Commencing on the Effective Date, Arrow shall only distribute or sell in California, or cause to be distributed for sale in California, Products that are Lead Free as defined below. For purposes of this Settlement Agreement, "Lead Free" Products shall mean Products containing components that may be handled, touched or mouthed by a consumer, and which components: (a) yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; and (b) yield less than 90 parts per million ("ppm") lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance. Products that are Lead Free are referred to hereinafter as "Reformulated Products."

The issue of the level of lead exposure was not definitively resolved in this case, as it was agreed between the Parties that the expert testimony required to examine the amount of chemical available for transfer from a product, how the product is handled in its regular use, how the

transfer of the chemical occurs, and how much of the chemical is ingested or absorbed, is sufficiently complex that its outcome presented risk to both Parties which was better left unresolved. Instead of litigating this issue, the Parties agreed that the lead content will be reduced to 90 ppm or less by weight to ensure that the level of exposure to the Listed Chemical has “no observable effect.”

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

Pursuant to Health & Safety Code § 25249.7(b) and in settlement of all of the violations alleged in the Notice and referred to in this Settlement Agreement, Arrow shall pay \$37,500 in combined civil penalty payments and credits. As a result of Arrow’s commitment to reformulate the Products, Dr. Held will provide a penalty credit of \$25,000. Thereafter, Defendant shall pay the remaining sum of \$12,500.00. Civil penalties shall be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d) with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) remitted to Held.

Arrow shall issue two checks for the following amounts made payable to: (a) “The Chanler Group in Trust for OEHHA” in the amount of \$9,375; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$3,125. Two 1099 forms shall also be provided for the payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose address and tax identification number shall be furnished upon request three calendar days before payment is due. Payment shall be delivered to Held’s counsel on or before the Effective Date at the following address:

The Chanler 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

general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (“CCP”) § 1021.5 for all work performed in this matter. Under these legal principles, Arrow shall pay \$29,000 for fees and costs incurred by Held and Held’s counsel investigating, bringing this matter to the Arrow’ attention, and negotiating a settlement in the public interest. Arrow shall provide payment in the form of a check payable to “The Chanler Group.” Arrow shall also issue a third 1099 form for fees and costs paid to the The Chanler Group (EIN: 94-3171522), and deliver payment to Held’s counsel on or before the Effective Date at the following address:

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

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Settlement Agreement is a full, final, and binding resolution between Held, on behalf of himself and the public in California, and Arrow, of any violation of Proposition 65 that was or could have been asserted by Held against Arrow, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Arrow directly or indirectly distributes or sells Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), regarding unwarned exposures to the Listed Chemical contained in the Products sold by Arrow.

### **5.2 Held’s Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, 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, exclusive of fees and costs on appeal, if any, arising under Proposition 65 (collectively "Claims") that were brought or could have been brought against Arrow for alleged or actual unwarned exposures to the Listed Chemical contained in the Products sold by Arrow.

### **5.3 Held's Individual Release of Claims**

Held, in his individual capacity only and *not* in his representative capacity, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims, liabilities and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, against Defendant and Releasees, arising out of unwarned exposures to the Listed Chemical contained in the Products sold by Arrow.

### **5.4 Arrow' Release of Held**

Arrow on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

## **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of its provisions are held by a court to be unenforceable, the validity of the 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 and/or the Listed Chemical, then Arrow 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 sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier to the following addresses:

For Held:

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

For Arrow:

Robert Kleckauskas, President  
Arrow Plastic Manufacturing Co.  
701 East Devon Avenue  
Elk Grove Village, IL 60007

with a copy to:

Laura P. Worsinger, Esq.  
Dykema Gossett LLP  
333 S. Grand Ave., Suite 2100  
Los Angeles, CA 90071

Any party may, from time to time, 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 portable document format (PDF) signature, 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 the 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 4:25 pm, Dec 27, 2011*

Date

**AGREED TO:**

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

By:

*Anthony E. Held*  
\_\_\_\_\_  
Anthony Held

By:

\_\_\_\_\_  
Robert Kleckauskas, President  
Arrow Plastic Manufacturing Co.

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**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:

AGREED TO:

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

Date: 12/27/11

By: \_\_\_\_\_  
Anthony Held

By: Robert Kleckauskas  
Robert Kleckauskas, President  
Arrow Plastic Manufacturing Co.