

# 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 Aurora Wholesalers, LLC (“Aurora”), with Held and Aurora 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. Aurora 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 Aurora manufactures, distributes, sells, and/or offers for sale vinyl/PVC football flags containing lead in California without the requisite Proposition 65 health hazard warning. Lead is listed pursuant to Proposition 65 as a chemical known to California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC football flags containing lead including, but not limited to, the *Classic Sport Flag Football and Field Marking Kit, #4-1-25-930, UPC #0 44736 25930 1*, which were manufactured, distributed, sold and/or offered for sale in California by Aurora, hereinafter referred to as the “Products.”

### 1.4 Notice of Violation

On or about February 7, 2014, Held served Aurora and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”), alleging that Aurora was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products exposed users to lead. This Settlement Agreement shall become effective on the Effective Date, defined below, provided no public enforcer has elected to enforce and is diligently prosecuting the violations alleged in the Notice.

**1.5 No Admission**

Aurora denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or 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 Aurora 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 Aurora of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Aurora. This Section shall not, however, diminish or otherwise affect Aurora'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 April 30, 2014.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards and Commitment**

Commencing on the Effective Date and continuing thereafter, Aurora shall only manufacture, distribute, sell, or offer for sale in California Products that are "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing components that may be handled, touched, or mouthed by a consumer, and which components yield: (1) less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100; and (2) less than 100 parts per million lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B.

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

In settlement of all the claims referred to in this Settlement Agreement, Aurora shall pay a total of \$7,500 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with

75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

**3.1 Initial Civil Penalty**

Aurora shall pay an initial civil penalty in the amount of \$1,500 on or before the Effective Date. Aurora shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,125; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$375. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

**3.2 Final Civil Penalty**

Aurora shall pay a final civil penalty of \$6,000 on or before June 15, 2014. The final civil penalty shall be waived in its entirety, however, if, no later than June 1, 2014, an officer of Aurora provides Held with written certification that, as of the date of such certification and continuing into the future, Aurora has met the reformulation standard specified in Section 2.1 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Aurora are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Aurora shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$4,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount of \$1,500.

**3.3 Payment Procedures**

**3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

(a) All payments owed to Held, pursuant to Sections 3.1 and 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 and 3.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

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:

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

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

**3.3.2 Issuance of 1099 Forms.** After each penalty payment, Aurora shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1(b) above.

#### **4. 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 this fee issue to be resolved after the material terms of the agreement had been settled. Held then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach 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 § 1021.5, for all work performed through the mutual execution of this agreement. Aurora shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Aurora's attention, and negotiating a settlement in the public interest. Aurora shall issue a separate 1099 for fees and costs (EIN: 94-3171522),

shall make the check payable to “The Chanler Group” and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1 above.

## **5. RELEASES**

### **5.1 Held’s Release of Aurora**

This Settlement Agreement is a full, final and binding resolution between Held and Aurora, of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Aurora, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Aurora directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold, and/or offered for sale by Aurora in California before the Effective Date.

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, hereby waives all his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, 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, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to lead in the Products manufactured, distributed, sold and/or offered for sale by Aurora before the Effective Date, against Aurora and Releasees.

### **5.2 Aurora’s Release of Held**

Aurora, 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**6. POST-EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Aurora may ask Held, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and seek the court's approval of the consent judgment pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with Aurora and to use best efforts and that of his counsel to support the entry of a consent judgment incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, Aurora will reimburse Held and his counsel for their reasonable fees and costs incurred drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$16,000, exclusive of fees and costs incurred on appeal, if any. Aurora shall remit payment to The Chanler Group at the payment address provided in Section 3.3.1 above. Such additional fees shall be paid by Aurora within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

**7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**8. 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.

**9. 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 on any party by the other party at the following addresses:

To Aurora:

Ed Frantz, CFO  
Aurora Wholesalers, LLC  
31000 Aurora Road, Suite 1  
Cleveland, OH 44139

To Held:

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

With copy to:

Lee Marshall, Esq.  
Haight Brown & Bonesteel LLP  
555 South Flower Street  
Forty-Fifth Floor  
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.

**10. 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.

**11. POST-EXECUTION ACTIVITIES**

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (f).

**12. MODIFICATION**

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

**13. AUTHORIZATION**

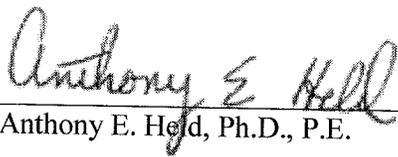
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: March 27, 2014

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

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

By: \_\_\_\_\_  
Ed Frantz, CFO  
Aurora Wholesalers, LLC

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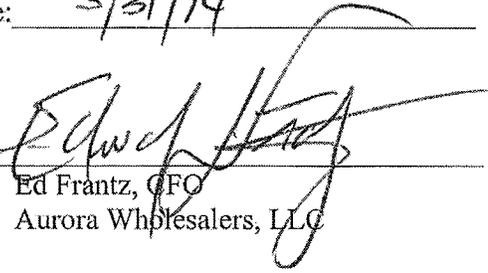
**AGREED TO:**

**AGREED TO:**

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

Date: 3/31/14

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

By:   
Ed Frantz, CFO  
Aurora Wholesalers, LLC