

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Anthony E. Held, Ph.D., P.E. and Essendant Co.**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and Essendant Co. (“Essendant”) with Dr. Held and Essendant collectively referred to as the “Parties.” Dr. Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Essendant 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Dr. Held alleges that Essendant manufactures, imports, sells and/or distributes for sale in California, products containing lead, and that it does so without providing the health hazard warning that Dr. Held alleges is required by 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.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are battery clamp handles containing lead including, but not limited to, the *Anchor Brand Heavy Duty Battery Clamp, #67120R, UPC #6 04669 17303 9* that are manufactured, imported, distributed, sold and/or offered for sale by Essendant in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about October 24, 2017, Dr. Held served Essendant, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that it violated Proposition 65 when it failed to warn its customers and consumers in California that the Products

expose users to lead. 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**

Essendant denies the material, factual and legal allegations contained in the 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 Essendant 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 Essendant of any fact, finding, conclusion, issue of law or violation of law. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 23, 2018.

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

**2.1 Reformulation Standards/Commitment**

Commencing on or before October 1, 2018, Essendant shall not ship for sale, sell, or offer for sale in California Products that are manufactured, distributed or sold by Essendant unless they contain less than 90 parts per million ("ppm") of lead by weight in any accessible component (i.e., any component that can be touched or handled during reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency 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; *and* (b) yield no more than 1.0 microgram ("µg") of lead when analyzed pursuant to NIOSH Test Method No. 9100 (hereinafter "Reformulated Products"), or contain warnings in compliance with section 2.2 below.

## 2.2 **Product Warnings**

As an alternative to reformulating the Products, Products that Essendant ships for sale, sells or offers for sale in California that do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as described in this section. Commencing no later than October 1, 2018, Essendant shall provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) for all Products that do not qualify as Reformulated Products. 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.** Essendant shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:



**WARNING:** Cancer and Reproductive Harm - [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)

(ii) **Point-of-Sale Warnings.** Alternatively, Essendant 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. Such instruction sent to Essendant's customers shall be sent by certified mail, return receipt requested.



**WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov)

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 2.1), the following statement shall be used:<sup>1</sup>



**WARNING:** The following products can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Essendant sells Products via mail order catalog and/or the internet, to customers located in California, after October 1, 2018, that are not Reformulated Products, Essendant shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(a)(ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall 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:



**WARNING:** The following products can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

**(ii) Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same

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<sup>1</sup>For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar 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.

web page on which a Product is displayed; (b) on the same web page as the order form for a 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:** The following products can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

Alternatively, 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, Essendant may utilize a designated symbol to cross reference the applicable warning with a “designated symbol” which 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:** The following products can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

*[list products for which warning is required]*

**2.3** The requirements for warnings, set forth in Section 2.2 above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations but agree that they shall be used pursuant to this Settlement Agreement.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Essendant agrees to pay a total of \$4,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Dr. Held.

Essendant will deliver its payment on or before the Effective Date, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$1,000. Dr. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

#### **3.2 Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge that Dr. 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Essendant expressed a desire to resolve Dr. Held’s fees and costs. The Parties then negotiated a resolution of the compensation due to Dr. 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, Essendant shall reimburse Dr. Held and his counsel \$19,500. Essendant’s payment shall be delivered to the address in Section 3.3, on or before the Effective Date, in the form of a check payable to “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Dr. Held investigating, bringing this matter to Essendant’s attention and negotiating a settlement of the matter.

#### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following

address:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Dr. Held's Release of Proposition 65 Claims**

Dr. Held acting on his own behalf, and *not* on behalf of the public, releases Essendant, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Essendant directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to lead in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 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 Essendant, other than Airgas, Inc. (and its affiliated entities), and as to Airgas, Inc., this release shall only apply to the specific units of the Products actually distributed or sold by Essendant and not by any other entity.

##### **4.2 Dr. Held's Individual Releases of Claims**

Dr. Held, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Dr. Held of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to

lead in the Products manufactured, imported, distributed, or sold by Essendant prior to the Effective Date.

The Parties further understand and agree that this Section 4.2 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 Essendant, other than Airgas, Inc. (and its affiliated entities), and as to Airgas, Inc., this release shall only apply to the specific units of the Products actually distributed or sold by Essendant and not by any other entity.

Nothing in this Section affects Dr. Held's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

#### **4.3 Essendant's Release of Dr. Held**

Essendant, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Dr. 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 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

#### **5. SEVERABILITY**

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

#### **6. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then



Essendant shall provide written notice to Dr. Held of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Similarly, if Proposition 65 warnings for lead or lead compounds should no longer be required under Proposition 65, Essendant shall have no further warning obligations pursuant to this Settlement Agreement. Nothing in this Settlement Agreement shall be interpreted to relieve Essendant from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Essendant:

Chris Kempa, Group Vice President – Industrial  
Essendant Co.  
1 Parkway North Blvd., Suite 100  
Deerfield, IL 60015

With a copy to:

Brian M. Ledger, Esq.  
Gordon Rees Scully Mansukhani, LLP  
101 W. Broadway, Suite 2000  
San Diego, CA 92101

For Dr. Held:

Proposition 65 Coordinator  
The Chanler 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.

8. **COUNTERPARTS; FACSIMILE AND 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.

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

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

10. **MODIFICATION**

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

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


**AGREED TO:**

**AGREED TO:**

Date: 7/17/18

Date: 7/16/2018

By:   
ANTHONY E. HELD, PH.D., P.E.

By:   
CHRIS KEMPA,  
GROUP VICE PRESIDENT –  
INDUSTRIAL  
ESSENDANT CO.