

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 Grocery Outlet, Inc. (“Grocery”), with Held and Grocery each individually referred to as a “Party” and collectively as the “Parties.” 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. Grocery is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 **General Allegations.** Held alleges that Grocery manufactured, imported, sold, or distributed for sale in the State of California, bar stools, ottomans, and storage boxes with foam padding containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without first providing the clear and reasonable warning required by Proposition 65. TDCPP is a flame retardant added to both soft and rigid polyurethane foam, which is used as cushioning in a variety of products, including upholstered chairs. Held also alleges that Grocery employed ten or more persons at some time during the year prior to the issuance of the notice referred to in paragraph 1.4, below. Grocery disputes this allegation.

1.3 **Product Description.** The products covered by this Settlement Agreement are bar stools, ottomans, and leather storage boxes with foam padding containing TDCPP that are manufactured, imported, distributed, and/or sold in the State of California by Grocery, specifically identified as the *29" Swivel Bar Stool, Item#: JM-J0592, GOI Item#723715, UPC #086467 00104 0, NS XYF457 Folding Storage Ottoman KD, and NS Faux Leather Storage Box* (collectively “Products”).

1.4 **Notice of Violation.** On October 25, 2013, Held served Grocery and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Grocery violated Proposition 65 when it failed to warn its customers and consumers in California that the

Products expose users to TDCPP. 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. Grocery denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale 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 Grocery 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 Grocery of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Grocery. This Section shall not, however, diminish or otherwise affect Grocery's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" means May 30, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, Grocery shall not manufacture, import, ship, sell, and distribute for sale in California the Products. As of the Effective Date of this Settlement Agreement, Grocery hereby certifies it has withdrawn the Products from market and that they are no longer offered for sale by Grocery in California.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Grocery shall pay \$12,500 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (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 paid to Held.

3.1.1 Civil Penalty. Within ten days of the Effective Date, Grocery shall make an initial civil penalty payment of \$12,500. Grocery shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$9,375; and (b)

“Moscone Emblidge Sater & Otis in Trust for Anthony Held” in the amount of \$3,125.

3.2 Attorney 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Grocery shall reimburse Held and his counsel \$37,500 for the fees and costs incurred in investigating, bringing this matter to the attention of Grocery’s management, and negotiating a settlement in the public interest. Grocery shall provide payment in the form of a check made payable to “Moscone Emblidge Sater & Otis LLP in Trust” and delivered within ^{ten}~~five~~ days of the Effective Date. SL

3.3 Payment Procedures. Payments are to be delivered according to the following subsections.

3.3.1 Payment Address for Held. All payments to Held and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

3.3.2 Payment Addresses for OEHHA. All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) at one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Grocery agrees to provide Held's counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Held, to be delivered to the address provided in Section 3.3.1.

3.3.4 Tax Documentation. Grocery agrees to provide a completed IRS 1099 form for its payments to each of the following payees under this Settlement Agreement:

- (a) "Anthony Held" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) "Moscone Emblidge Sater & Otis LLP" (EIN: 80-0826360) at the address provided in section 3.3.1; and
- (c) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486),
1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Grocery. This Settlement Agreement is a full, final, and binding resolution between Held and Grocery of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, the public interest, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Grocery, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Grocery directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to TDCPP from Products manufactured, sold or distributed for sale in California by Grocery prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors,

and assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Grocery, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to TDCPP from Products manufactured, sold, or distributed for sale in California by Grocery prior to the Effective Date.

5. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 as to the Products, then Grocery may provide written notice to Held of any asserted change in the law, and 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 Grocery or any Releasees from any obligation to comply with any pertinent state or federal law.

7. **NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Grocery:

Charles Custer, Esq.
Gordon & Rees

275 Battery Street, Suite 2000
San Francisco, CA 94111

For Held:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

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.

8. 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.

9. POST-EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. ENFORCEMENT

This Settlement Agreement is enforceable pursuant to Code of Civil Procedure section 664.6.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12. MODIFICATION

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

13. AUTHORIZATION

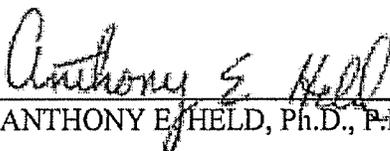
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: May 23, 2014

Date: _____

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

By: _____
GROCERY OUTLET, INC.

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: _____

Date: 5/27/14

By: _____
ANTHONY E. HELD, Ph.D., P.E.

By: 
GROCERY OUTLET, INC.