

# 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 Whirlpool Corporation (“Whirlpool”), with Held and Whirlpool 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 in consumer products. Whirlpool 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 Whirlpool sells or distributes for sale in California, stools with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the health hazard warning that Held alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are stools with vinyl/PVC upholstery containing DEHP that are manufactured, sold and/or distributed for sale in California by Whirlpool including, but not limited to, the *Gladiator Garageworks Garage Stool, #09 62386, UPC #0 50946 97321 0*. All such stools with vinyl/PVC upholstery containing DEHP are referred to collectively hereinafter as the “Products.”

### 1.4 Notice of Violation

On November 25, 2014, Held served Whirlpool and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Whirlpool violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. 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**

Whirlpool denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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 Whirlpool of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Whirlpool of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Whirlpool. This Section shall not, however, diminish or otherwise affect Whirlpool'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 June 26, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on September 1, 2015, and continuing thereafter, Whirlpool shall only purchase for sale or manufacture for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DEHP concentration of 1,000 parts per million in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DEHP content in a solid substance.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

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, Whirlpool agrees to pay \$15,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% paid to Held. Held’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment made under this Settlement Agreement.

**3.1.1 Initial Civil Penalty.** Within three weeks of the Effective Date, Whirlpool shall make an initial civil penalty payment of \$5,000. Whirlpool agrees to provide its payment in a single check made payable to: “Anthony E. Held, Client Trust Account.”

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On November 15, 2015, Whirlpool shall pay a final civil penalty of \$10,000. Pursuant to California Code of Regulations, title 11, section 3203(c), the final civil penalty payment will be waived in its entirety if, on or before November 1, 2015, an authorized representative of Whirlpool provides Held’s counsel with a signed declaration certifying that it is only selling or distributing for sale in California, Reformulated Products, and that it will continue to only offer Reformulated Products in California in the future. The option to provide a declaration certifying complete, accelerated product reformulation in lieu of making the final civil penalty payment is a material term, and time is of the essence. To be eligible for a waiver of the final civil penalty, Whirlpool must send Held’s counsel its signed declaration indicating its compliance with the above early reformulation requirement on or before November 1, 2015.

### **3.2 Reimbursement of Held’s Attorneys’ 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, within three weeks of the Effective Date, Whirlpool agrees to pay \$25,000 in the form of a check payable to “The Chanler Group” for all fees and costs incurred by Held investigating, bringing this matter to the attention of Whirlpool’s management, and negotiating a settlement in the

public interest.

### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

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

### **4.1 Held's Release of Whirlpool**

This Settlement Agreement is a full, final, and binding resolution between Held and Whirlpool, of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Whirlpool and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Whirlpool directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), alleging a failure to warn about exposures to DEHP in Products that Whirlpool sold or distributed for sale 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 any right 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 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP from Products sold or distributed for sale by

Whirlpool before the Effective Date. The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and are not releases on behalf of the public.

#### **4.2 Whirlpool's Release of Held**

Whirlpool, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements 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.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be 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 Whirlpool may provide written notice to Held of the 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.

#### **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 Whirlpool:

Kyle De Jong, Senior Counsel  
Whirlpool Corporation  
2000 N. M-63  
Benton Harbor, MI 49022

with a copy to:

Bruce Nye, Esq.  
Adams | Nye | Becht LLP  
222 Kearny Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108

For Held:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

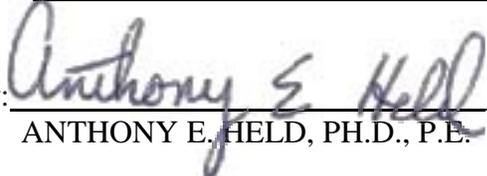
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 6/30/15 \_\_\_\_\_

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

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

By: \_\_\_\_\_  
WHIRLPOOL CORPORATION

For Whirlpool:

Kyle De Jong, Senior Counsel  
Whirlpool Corporation  
2000 N. M-63  
Benton Harbor, MI 49022

with a copy to:

Bruce Nye, Esq.  
Adams | Nye | Becht LLP  
222 Kearny Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108

For Held:

The Chanler Group  
Attn: Prop 65 Coordinator  
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**AGREED TO:**

**AGREED TO:**

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

Date: 7/1/15

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

By:  \_\_\_\_\_  
WHIRLPOOL CORPORATION