

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 Sazerac Company, Inc. (“Sazerac”), with Held and SAZERAC 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. SAZERAC 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 Sazerac manufactured, imported, sold, or distributed for sale in the State of California, drinking glasses containing lead without first providing the clear and reasonable warning required by Proposition 65. Lead is on the Proposition 65 list as a chemical known to the State of California to cause birth defects and other reproductive harm.

Held also alleges that Sazerac 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.

1.3 Product Description. The products covered by this Settlement Agreement are drinking glasses containing lead that are manufactured, imported, distributed, and/or sold in the State of California by Sazerac, including, but not limited to, the drinking glasses sold as part of *Caravella Limoncello Originale Set, UPC # 0 80660 77605 7* (collectively “Products”).

1.4 Notice of Violation. On October 25, 2013, Held served Sazerac and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Sazerac 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. Sazerac 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 Sazerac 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 Sazerac of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Sazerac. This Section shall not, however, diminish or otherwise affect Sazerac's rights, obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" means June 20, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, Sazerac shall use reasonable efforts to manufacture, import, ship, sell, or distribute for sale in California only Products that contain no Lead. Sazerac shall be deemed to satisfy this provision by requesting vendors from whom Sazerac purchases the Products that the Products supplied to Sazerac not contain Lead. Sazerac will obtain written confirmation from vendors from whom Sazerac purchases the Products that the Products supplied to Sazerac do not contain Lead, and Sazerac will keep such written confirmation in its files.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Sazerac shall pay \$9,000 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 Initial Civil Penalty. Within 14 days of the Effective Date, Sazerac shall make an initial civil penalty payment of \$9,000. Sazerac shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$6,750; and

(b) “Anthony Held, Client Trust Account” in the amount of \$2,250.

3.1.2 Final Civil Penalty. In signing this Settlement Agreement, subject to and consistent with Paragraph 2 of this Settlement Agreement, Sazerac certifies and warrants that it will use reasonable efforts to ensure that one-hundred percent (100%) of the Products that Sazerac manufactures, imports, ships, sells, or distributes for sale in California are Products containing no Lead and that Sazerac will continue to offer only Products that contain no Lead. Given this certification and warranty, the Parties have agreed that there is no need for the possible imposition of a Final Civil Penalty.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Held and his counsel under the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these principles, Sazerac shall reimburse Held and his counsel \$32,500 for the fees and costs incurred in investigating, bringing this matter to the attention of Sazerac’s management, and negotiating a settlement in the public interest. Sazerac shall provide payment in the form of a check made payable to “Moscone Emblidge Sater & Otis LLP in Trust” within fourteen days of the Effective Date.

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. Sazerac 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. Sazerac 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", 1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Sazerac. This Settlement Agreement is a full, final, and binding resolution between Held and Sazerac of any violation of Proposition 65 that was or could have been asserted by Held, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Sazerac, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity

to whom Sazerac 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 lead from Products manufactured, sold or distributed for sale in California by Sazerac 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 Sazerac, 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 lead from Products manufactured, sold, or distributed for sale in California by Sazerac prior to the Effective Date.

4.2 Sazerac’s Release of Held. Sazerac, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, hereby waives any and all claims that it may have 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 and the Releasees in this matter, or with respect to the Products prior to the Effective Date.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within eighteen months of the execution of this Settlement Agreement, Sazerac may request in writing that Held draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Held and Sazerac agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of

judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Sazerac agrees to reimburse Held and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$10,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving an invoice for work performed under this section, Sazerac will remit payment to the address provided in Section 3.3.1.

6. 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.

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, then Sazerac 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 Sazerac or any Releasees from any obligation to comply with any pertinent state or federal law.

8. 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 Sazerac:

Beatriz Mejia, Esq.
Cooley LLP
101 California Street, 5th Floor
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.

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. POST-EXECUTION ACTIVITIES

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

11. ENFORCEMENT

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

12. 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.

13. **MODIFICATION**

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

14. **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: 6/20/2014

Date: 6/25/14

By: *Anthony E. Held*
ANTHONY E. HELD, Ph.D., P.E.

By: *Lori L. Logan*
SAZERAC COMPANY, INC.