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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

RECEIVED
ALAMEDA COUNTY
JAN 31 2015
FILED
ALAMEDA COUNTY
MAR 06 2015
By MARGARET J. DOWNING
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
CALLAWAY GOLF COMPANY, *et al.*,
Defendants.

Case No. RG14746312
~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT
Date: March 6, 2015
Time: 9:00 a.m.
Dept.: 18
Judge: Hon. Kimberly E. Colwell
Reservation No.: R-1588954

1 In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E., and defendant Callaway
2 Golf Company, having agreed through their respective counsel that Judgment be entered pursuant to
3 the terms of their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent
4 Judgment”), and following this Court’s issuance of an Order approving this Proposition 65 settlement
5 and Consent Judgment on MAR 06 2015.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is
8 entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By
9 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of
10 Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 3/6/15

15 
16 _____
17 JUDGE OF THE SUPERIOR COURT

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Kimberly Colwell

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 ("Held") and Callaway Golf Company ("Callaway"), with Held and Callaway each individually
5 referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Held is an individual residing in the State of California who seeks to promote awareness of
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 Callaway employs ten or more persons and is a "person in the course of doing business" for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Callaway manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC golf club covers containing di(2-ethylhexyl)phthalate ("DEHP") without first providing
17 the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The Callaway products that are covered by this Consent Judgment are defined as the
21 *Odyssey Aftermarket Mallet Putter Cover*, part numbers: 5500006, 5508089, 5508089, 5509005,
22 5509006, 5509007, 5509008, 5511001, and 5511003, manufactured, imported, distributed, sold
23 and/or offered for sale by Callaway in the State of California, hereinafter the "Products."

24 **1.6 Notice of Violation**

25 On or about April 30, 2014, Held served Callaway and certain requisite public enforcement
26 agencies with a 60-Day Notice of Violation ("Notice") alleging that Callaway was in violation of
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1 Proposition 65 for failing to warn its customers and consumers in California that the Products
2 expose users to DEHP.

3 **1.7 Complaint**

4 On October 30, 2014, Held filed the instant action (“Complaint”), naming Callaway as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice.

7 **1.8 No Admission**

8 Callaway denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue
12 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
14 This Section shall not, however, diminish or otherwise affect Callaway’s obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Callaway as to the allegations in the Complaint, that venue is proper in the County
19 of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means December 15,
23 2014.

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

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Callaway shall only purchase
27 for sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated
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1 Products," or Products that are sold with a clear and reasonable warning pursuant to Section 2.2
2 below. For purposes of this Consent Judgment, Reformulated Products are products that contain
3 DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
4 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content
6 in a solid substance. In addition to the EPA test methods authorized above, the Parties may utilize
7 equivalent methodologies employed by state or federal agencies to determine DEHP content in a
8 solid substance.

9 **2.2 Warnings**

10 Commencing on the Effective Date and continuing thereafter, Callaway shall provide clear
11 and reasonable warnings as set forth in subsections 2.2(a) and (b) for all Products that do not
12 currently have warnings and that do not qualify as Reformulated Products that are in Callaway's
13 inventory. Each warning shall be prominently placed with such conspicuousness as compared with
14 other words, statements, designs, or devices as to render it likely to be read and understood by an
15 ordinary individual under customary conditions before purchase or use. Each warning shall be
16 provided in a manner such that the consumer or user understands to which *specific* Product the
17 warning applies, so as to minimize the risk of consumer confusion.

18 **(a) Retail Store Sales.**

19 **(i) Product Labeling.** Callaway shall affix a warning to the packaging,
20 labeling, or directly on each Product provided for sale in retail outlets in California that states:

21 **WARNING:** This product contains DEHP, a chemical
22 known to the State of California to cause
birth defects and other reproductive harm.

23 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

24 **WARNING:** This product contains chemicals known
25 to the state of California to cause cancer,
26 birth defects, and other reproductive harm.

27 **(ii) Point-of-Sale Warnings.** Alternatively, Callaway may provide warning
28 signs in the form below to its customers in California with instructions to post the warnings in close

1 proximity to the point of display of the Products. Such instruction sent to Callaway's customers
2 shall be sent by certified mail, return receipt requested.

3 WARNING: This product contains DEHP, a chemical
4 known to the State of California to cause
 birth defects and other reproductive harm.

5 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

6 WARNING: This product contains chemicals known
7 to the state of California to cause cancer,
8 birth defects, and other reproductive harm.

9 Where more than one Product is sold in proximity to other like items or to those that do not
10 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
11 shall be used:¹

12 WARNING: The following products contain DEHP, a chemical known to the State
13 of California to cause birth defects and other reproductive harm:
14 [*list products for which warning is required*]

15 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

16 WARNING: The following products contain chemicals known
17 to the state of California to cause cancer,
18 birth defects, and other reproductive harm:
 [*list products for which warning is required*]

19 **(b) Mail Order Catalog and Internet Sales.** In the event that Callaway sells Products
20 via mail order catalog and/or the internet, to customers located in California, after the Effective
21 Date, that are not Reformulated Products, Callaway shall provide warnings for such Products sold
22 via mail order catalog or the internet to California residents. Warnings given in the mail order
23 catalog or on the internet shall identify the *specific* Product to which the warning applies as further
24 specified in Sections 2.2(b)(i) and (ii).

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27 ¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar
28 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.

1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
2 catalog shall be in the same type size or larger than the Product description text within the catalog.
3 The following warning shall be provided on the same page and in the same location as the display
4 and/or description of the Product:

5 **WARNING:** This product contains DEHP, a chemical
6 known to the State of California to cause
7 birth defects and other reproductive harm.

8 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

9 **WARNING:** This product contains chemicals known
10 to the state of California to cause cancer,
11 birth defects, and other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location
13 as the display and/or description of the Product, Callaway may utilize a designated symbol to cross
14 reference the applicable warning and shall define the term "designated symbol" with the following
15 language on the inside of the front cover of the catalog or on the same page as any order form for
16 the Product(s):

17 **WARNING:** Certain products identified with this symbol ▼
18 and offered for sale in this catalog contain DEHP,
19 a chemical known to the State of California to cause
20 birth defects and other reproductive harm.

21 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

22 **WARNING:** Certain products identified with this symbol ▼
23 and offered for sale in this catalog contain
24 a chemical known to the State of California to cause
25 cancer, birth defects and other reproductive harm.

26 The designated symbol must appear on the same page and in close proximity to the display
27 and/or description of the Product. On each page where the designated symbol appears, Callaway
28 must provide a header or footer directing the consumer to the warning language and definition of
the designated symbol.

(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 web

1 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
2 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
3 purchaser during the checkout process. The following warning statement shall be used and shall
4 appear in any of the above instances adjacent to or immediately following the display, description,
5 or price of the Product for which it is given in the same type size or larger than the Product
6 description text:

7 **WARNING:** This product contains DEHP, a chemical
8 known to the State of California to cause
 birth defects and other reproductive harm.

9 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

10 **WARNING:** This product contains chemicals known
11 to the state of California to cause cancer,
 birth defects, and other reproductive harm.

12 Alternatively, the designated symbol may appear adjacent to or immediately following the
13 display, description, or price of the Product for which a warning is being given, provided that the
14 following warning statement also appears elsewhere on the same web page, as follows:
15

16 **WARNING:** This product contains DEHP, a chemical
17 known to the State of California to cause
 birth defects and other reproductive harm.

18 Or, in the event another Proposition 65 Listed Chemical is discovered in the Products:

19 **WARNING:** This product contains chemicals known
20 to the state of California to cause cancer,
 birth defects, and other reproductive harm.

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22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty Payments**

24 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims
25 referred to in this Consent Judgment, Callaway shall pay \$12,500 in civil penalties. Each civil
26 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and
27 (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental
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1 Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to
2 Held.

3 **3.1.1 Initial Civil Penalty**

4 Within five days of the date this Consent Judgment is approved by the Court
5 (including any tentative rulings that are unopposed), Callaway shall issue two separate checks for
6 the initial civil penalty payment totaling \$4,000 in the amount of \$3,000 to "OEHHA" and in the
7 amount of \$1,000 to "Anthony E. Held, Ph.D., P.E., Client Trust Account."

8 **3.1.2 Final Civil Penalty**

9 On or before July 15, 2015, Callaway shall make a final civil penalty payment of
10 \$8,500, apportioned 75% to "OEHHA" and 25% to "Anthony E. Held, Ph.D., P.E., Client Trust
11 Account." Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the
12 final civil penalty payment shall be waived in its entirety if, no later than July 1, 2015, an officer of
13 Callaway provides Held with written certification that all of the Products purchased for sale or
14 manufactured for sale in California as of the date of such certification are Reformulated Products as
15 defined by Section 2.1, and that Callaway will continue to offer only Reformulated Products in
16 California in the future. The option to certify reformulation in lieu of making the final civil penalty
17 payment required by this Section is a material term and time is of the essence.

18 **3.2 Reimbursement of Fees and Costs**

19 The parties acknowledge that Held and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
21 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, Callaway expressed a desire to resolve Held's fees and
23 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
24 his counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
26 execution of this Consent Judgment. Callaway shall, within five days from the date which this
27 Consent Judgment is approved by the Court (including any tentative rulings that are unopposed),
28

1 issue a check for \$30,500, payable to "The Chanler Group" to the address found in Section 3.3.1
2 below.

3 **3.3 Payment Procedures**

4 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
5 this Consent Judgment are to be delivered within five days of the date this Consent Judgment is
6 approved (including any tentative rulings that are unopposed) according to the following
7 subsections.

8 **3.3.1 Payment Addresses**

9 (a) All payments and tax documentation for Held and his counsel shall be
10 delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 (b) All payments and tax documentation for OEHHA shall be delivered to
17 OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
18 appropriate:

19 For United States Postal Service Delivery:

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

25 For Non-United States Postal Service Delivery or Courier:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.2 Proof of Payment to OEHHA

Callaway shall provide Held's counsel with a copy of the checks sent to OEHHA
enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held's Public Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest, releases Callaway and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
6 Products, including but not limited to its downstream distributors, wholesalers, customers,
7 retailers, franchisers, cooperative members, licensors, and licensees ("Downstream Releasees") for
8 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products sold
9 by Callaway prior to the Effective Date. Compliance with the terms of this Consent Judgment
10 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
11 sold by Callaway before the Effective Date, as set forth in the Notice.

12 **4.2 Held's Individual Release of Claims**

13 Held, in his individual capacity only and *not* in his representative capacity, also provides a release
14 to Callaway, Releasees, and Downstream Releasees which shall be effective as a full and final
15 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
16 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
17 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
18 exposures to DEHP from the Products sold or distributed for sale by Callaway before the Effective
19 Date.

20 **4.3 Callaway's Release of Held**

21 Callaway, on its own behalf, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
23 attorneys and other representatives, for any and all actions taken or statements made by Held and
24 his attorneys and other representatives, whether in the course of investigating claims, otherwise
25 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall be
3 null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the Parties.

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not
8 be adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California and
11 apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
12 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Callaway
13 may provide written notice to Held of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
15 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Callaway from any
16 obligation to comply with any pertinent state or federal toxics control laws.

17 **8. NOTICE**

18 Unless specified herein, all correspondence and notice required by this Consent Judgment
19 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
20 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

21
22 For Callaway:
23 Mike Catania
24 Callaway Golf Company
25 2180 Rutherford Road
26 Carlsbad, CA 92008

27 with a copy to:
28 Elizabeth V. McNulty, Esq.
 Archer Norris, APC
 4695 MacArthur Court, Suite 350
 Newport Beach, CA 92660

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For Held:

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

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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Held and Callaway agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and supporting the motion for judicial approval.

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

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14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: December 16, 2014

Date: P 12/16/14

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

By: *Brian P. Lynch*
Brian P. Lynch, General Counsel and
Senior Vice President
Callaway Golf Company

