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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

ANTHONY HELD, Ph.D., P.E., Plaintiff, v. AQUA LEISURE INDUSTRIES, INC.; and DOES 1 through 150, inclusive, Defendants.	Case No. 108CV113505 **STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT**

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and Aqua Leisure Industries, Inc.

This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. ("Dr. Held" or "Plaintiff"), on behalf of the public interest for the People of the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6, et seq. (aka, "Proposition 65'), and Aqua Leisure Industries, Inc. ("Defendant" or "Aqua Leisure"), with Plaintiff and Aqua Leisure collectively referred to hereinafter as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

Aqua Leisure employs ten or more persons who are each a person in the course of doing business for purposes of Proposition 65.

1.4 General Allegations

Dr. Held alleges that Aqua Leisure has manufactured, distributed and/or sold toys or other children's items containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the requisite health hazard warnings. DEHP is known to cause birth defects and other reproductive harm and is listed by its chemical nomenclature pursuant to Proposition 65. DEHP shall be referred to hereinafter as the "Listed Chemical." Aqua Leisure denies all of Dr. Held's allegations against it, and contends it is not violating any aspect of Proposition 65 with respect to its products.

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: inflatable vinyl toys/children's items containing DEHP, such as the *Deluxe Baby Boat, Model ET-9110WG, Item 852241 (#0 44194 09110 9)*. All such inflatable vinyl toys/children's items containing DEHP

are referred to hereinafter as the "Products".

1.6 Notice of Violation

On November 20, 2007, Dr. Held served Aqua Leisure, Walgreen Co. and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Aqua Leisure, Walgreen Co. and public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers that the Products that Aqua Leisure sold exposed users in California to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has responded to or diligently prosecuted the allegations set forth in the Notice.

1.7 Complaint

On May 27, 2008, Dr. Held, acting in the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of Santa Clara against Aqua Leisure, Walgreen Co. and Does 1 through 150, alleging violations of Proposition 65 based on the alleged exposures to the Listed Chemical contained in the Products sold by Aqua Leisure.

1.8 No Admission

Aqua Leisure denies each and all of the material, factual and legal allegations contained in Dr. Held's Notice and Complaint, and maintains that all Products it has sold and distributed in California have been and are in compliance with all laws, statutes and regulations. Nothing in this Consent Judgment shall be construed as an admission by Aqua Leisure of any fact, finding, issue of law, or alleged violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Aqua Leisure of any fact, finding, conclusion, issue of law, or alleged violation of law, such being specifically denied by Aqua Leisure. However, this section shall not diminish or otherwise affect Aqua Leisure's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Aqua Leisure as to the allegations contained in the Complaint, that venue is proper

in the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean June 30, 2008.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

Reformulated Products are defined as those Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical.

Aqua Leisure shall use Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or other comparable methodologies recognized and accepted by one or more federal and/or state agencies, including the Consumer Product Safety Commission, to determine whether the respective levels have been exceeded in its Products.

2.2 Reformulation Commitment

Aqua Leisure hereby commits that one hundred percent (100%) of the Products that it offers for sale in California after June 30, 2008 shall qualify as Reformulated Products, and thus no longer subject to the warning requirements of Proposition 65.

3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

In settlement of all the claims referred to in the Complaint and in this Consent Judgment, Aqua Leisure shall pay $9,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Dr. Held as provided by California Health & Safety Code §25249.12(d). Aqua Leisure shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of $6,750, representing 75% of the total penalty; and (b) one check to ""Hirst & Chanler LLP in Trust for Dr. Anthony Held" in the amount of $2,250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above

payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Dr. Anthony Held, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Dr. Held's counsel by the Effective Date, and shall be held in trust until such time as the Court enters an Order approving this Consent Judgment, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

4. REIMBURSEMENT OF FEES AND COSTS

4.1 Attorney 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 this fee issue to be resolved after the material terms of the agreement had been settled. Aqua Leisure then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on 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 (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Aqua Leisure shall reimburse Dr. Held and his counsel a total of $29,000 for fees and costs incurred as a result of investigating, bringing this matter to Aqua Leisure's attention, and litigating and negotiating a settlement in the public interest. Aqua Leisure shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" to be delivered by the Effective Date, and which shall be held in trust until such time as the Court enters an Order approving this Consent Judgment, to the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.

Pursuant to CCP §§1021 and 1021.5, the Parties agree that Aqua Leisure will reimburse Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement agreement in the Court, in an amount not to exceed $5,000. Such additional fees and costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f), responding to any third party objections, corresponding with opposing counsel and appearing before the Court related to the approval process.

Reimbursement of such additional fees and costs shall be due within ten days after receipt of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

Aqua Leisure has the right to object to such reimbursement and may submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California to determine the reasonableness of the additional fees and costs sought, provided that such notice of objection or decision to arbitrate is received by Dr. Held's attorneys by the end of the ten calendar days. If an arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP §1021.5 and this settlement agreement to recover additional attorney fees and costs incurred as set forth in this paragraph. In the event Aqua Leisure submits the matter to arbitration, Dr. Held may seek, pursuant to CCP §1021.5, and in the discretion of the arbitrator, reasonable attorney fees and costs incurred for the arbitration.

5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of Aqua Leisure

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, and other good and valuable consideration, Dr. Held, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and hereby releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees), of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Aqua Leisure and each and all of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Walgreen Co.), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, insurers, and employees, and their respective sister and parent entities (collectively "Releasees") that arise under Proposition 65, as such claims relate to Releasees' alleged failure to warn about exposures to the Listed Chemical contained in the Products. This release shall apply specifically without limitation to any of the Products sold or first offered for sale by Aqua Leisure and/or Walgreen Co., and any other Releasees, for sale of Aqua Leisure Products only, in the State of California on or prior to June 30, 2008, but shall not act to restrict prospective enforcement actions as to any other products, as to Products not originating from Aqua Leisure, or as to any other Proposition 65-listed chemicals (other than the Listed Chemical), if any, within the covered Products.

The Parties further understand and agree that this release shall not extend upstream of Aqua Leisure 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.

5.2 Aqua Leisure's Release of Dr. Held

Aqua Leisure waives any and all claims against Dr. Held, 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 enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court, and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties. In the event that this Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any monies that have been provided to Dr. Held and/or his attorneys pursuant to Section 3 and/or Section 4 above, shall be refunded in full within fifteen days of the appellate decision becoming final.

Upon entry of this Consent Judgment, Dr. Held and his attorneys shall cause the Action to be dismissed without prejudice as to Walgreen Co. and Does 1-150.

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, and shall remain in full force and effect.

8. GOVERNING LAW

The terms of this Consent Judgment 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 Listed Chemical and/or the Products, then Aqua Leisure shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

9. NOTICES

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

To Aqua Leisure:

Kevin C. Mayer, Esq.
LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP
1100 Glendon Avenue, 14th Floor
Los Angeles, CA 90024

To Dr. Held:

Proposition 65 Coordinator
HIRST & CHANLER LLP
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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Held and Aqua Leisure agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff agrees to file the necessary motion to approve the settlement.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified consent judgment by the Court. The Attorney General of the State of California shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

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: Date: 6/30/2008 By: Anthony E. Held Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date:_____ By:_____ Defendant, AQUA LEISURE INDUSTRIES, INC.
APPROVED AS TO FORM: Date: June 30, 2008 HIRST & CHANLER LLP By: _____ David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date:_____ LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP By:_____ Kevin C. Mayer Attorneys for Defendant AQUA LEISURE INDUSTRIES, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified consent judgment by the Court. The Attorney General of the State of California shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

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: Date:_____ By:_____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: 6/30/08 By: Barry Fineman Defendant, AQUA LEISURE INDUSTRIES, INC.
APPROVED AS TO FORM: Date:_____ HIRST & CHANLER LLP By:_____ David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: 6/30/08 LINER YANKELEVITZ SUNSHINE & REGENSTREIF LLP By:_____ Kevin C. Mayer Attorneys for Defendant AQUA LEISURE INDUSTRIES, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT