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THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
CMC GOLF, INC.; and DOES 1 through 150,
inclusive,
Defendants.

Case No. CGC-11-513492

CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and defendant CMC Golf, Inc. (“CMC Golf” or “Defendant”),
5 with Dr. Held and CMC Golf collectively referred to as the “Parties” and each individually
6 referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 CMC Golf employs 10 or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
14 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that CMC Golf has manufactured, imported, distributed, sold and/or
17 offered for sale in the State of California mini-day packs that expose users to di(2-
18 ethylhexyl)phthalate (“DEHP”) without the requisite health hazard warnings. DEHP is listed
19 pursuant to Proposition 65 as known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as mini-day packs
23 allegedly containing DEHP, including, but not limited to, *Mini Day Pack, ESPN (#4 00118*
24 *16101 1)*, manufactured, imported, distributed, sold, and/or offered for sale in California by
25 CMC Golf, hereinafter referred to as the “Products.”

26 **1.6 Notice of Violation**

27 On May 11, 2011, Dr. Held served CMC Golf and various public enforcement agencies
28 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients

1 with notice of alleged violations of Proposition 65 for failing to warn consumers that the Products
2 exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer
3 has commenced or is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On August 18, 2011, Dr. Held, acting in the interest of the general public in California,
6 filed a complaint in the Superior Court for the County of San Francisco against CMC Golf,
7 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP
8 from the mini-day packs manufactured, imported, distributed, sold and/or offered for sale by
9 CMC Golf. This action shall hereinafter be referred to as the "Complaint."

10 **1.8 No Admission**

11 CMC Golf denies the material factual and legal allegations in Dr. Held's Notice and
12 Complaint, and maintains that all Products sold and distributed in California have been and are in
13 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
14 by CMC Golf of any fact, finding, issue of law, or violation of law; nor shall compliance with this
15 Consent Judgment constitute or be construed as an admission by CMC Golf of any fact, finding,
16 conclusion, issue of law, or violation of law, such being specifically denied by CMC Golf.
17 However, this section shall not diminish or otherwise affect CMC Golf's obligations,
18 responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over CMC Golf as to the allegations in the Complaint, that venue is proper in the
22 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions
23 of this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 Commencing on September 15, 2012 (the "Effective Date"), CMC Golf shall
26 manufacture, import, distribute, sell and/or offer for sale in California only Products that are
27 "DEHP Free." For purposes of this Consent Judgment, "DEHP Free" shall mean Products
28 containing less than or equal to 1,000 parts per million ("ppm") of DEHP, when analyzed

1 pursuant to any testing methodology selected by CMC Golf that is acceptable to state or federal
2 government agencies in determining compliance with phthalate standards. The shipment, sale or
3 offering for sale in California on or before the Effective Date by CMC Golf or its customers of
4 Products shall not constitute a violation of this Consent Judgment, for which CMC Golf has
5 received a release pursuant to Section 4 and paid a civil penalty pursuant to Section 3.
6 Enforcement of the terms and conditions of this Section 2 shall be brought exclusively pursuant to
7 Section 15 of this Consent Judgment.

8 **3. MONETARY PAYMENTS**

9 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

10 CMC Golf shall pay \$5,000 in combined penalty payments and credits in civil penalties.
11 Dr. Held shall provide CMC Golf with a penalty credit of \$3,000 for its cooperation in the
12 settlement process and its commitment to reformulate the Products to be DEHP Free pursuant to
13 Section 2 above. Thereafter, the remaining amount of \$2,000 will be paid by CMC Golf and be
14 apportioned in accordance with Health & Safety Code § 25249.12, subdivisions (c)(1) and (d),
15 with 75% of these funds earmarked for the State of California's Office of Environmental Health
16 Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for
17 Dr. Held.

18 **3.2 Reimbursement of Dr. Held's Fees and Costs**

19 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
20 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
21 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
22 The Parties then expressed a desire to resolve the fee and cost issue shortly after the other
23 settlement terms had been finalized. The Parties attempted to, and did, reach an accord on the
24 compensation due to Dr. Held and his counsel under general contract principles and the private
25 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
26 performed in this matter, except fees that may be incurred on appeal. Under these legal
27 principles, but without admitting any liability as provided in Section 1.8 above, CMC Golf shall
28 pay the amount of \$20,000 for fees and costs incurred investigating, litigating and enforcing this

1 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
2 obtaining the Court's approval of this Consent Judgment.

3 **3.3 Payment Procedures**

4 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
5 shall be delivered on or before the Effective Date to either The Chanler Group or the attorney of
6 record for CMC Golf and shall be held in trust pending the Court's approval of this Consent
7 Judgment.

8 Payments delivered to The Chanler Group shall be made payable, as follows:

- 9 (i) One check made payable to "The Chanler Group in Trust for
10 OEHHA" in the amount of \$1,500;
11 (ii) One check made payable to "The Chanler Group in Trust for
12 Anthony E. Held" in the amount of \$500; and
13 (iii) One check made payable to "The Chanler Group in Trust" in the
14 amount of \$20,000.

15 Payments delivered to Squire Sanders (US) LLP shall be made payable, as follows:

- 16 (i) One check made payable to "Squire Sanders (US) LLP in Trust for
17 OEHHA" in the amount of \$1,500;
18 (ii) One check made payable to "Squire Sanders (US) LLP in Trust for
19 Anthony E. Held in the amount of \$500; and
20 (iii) One check made payable to "Squire Sanders (US) LLP in Trust for
21 The Chanler Group" in the amount of \$20,000.

22 If CMC Golf elects to deliver payments to its attorney of record, such attorney of record
23 shall: (a) confirm in writing within five (5) business days of receipt that the funds have been
24 deposited in a trust account; and (b) within five (5) business days of the date of the hearing on
25 which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in
26 three separate checks, as follows:

- 27 (i) One check made payable to "The Chanler Group in Trust for
28 OEHHA" in the amount of \$1,500;

- 1 (ii) One check made payable to “The Chanler Group in Trust for
- 2 Anthony E. Held” in the amount of \$500; and
- 3 (iii) One check made payable to “The Chanler Group” in the amount of
- 4 \$20,000.

5 **3.3.2 Issuance of 1099 Forms:** After the Consent Judgment has been approved
6 and the settlement funds have been transmitted to Dr. Held’s counsel, CMC Golf shall issue
7 separate 1099 forms, as follows:

- 8 (i) The first 1099 shall be issued to the Office of Environmental
- 9 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
- 10 95814 (EIN: 68-0284486) in the amount of \$1,500;
- 11 (ii) The second 1099 shall be issued to Anthony E. Held in the amount
- 12 of \$500, whose address and tax identification number shall be
- 13 furnished upon request; and
- 14 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-
- 15 3171522) in the amount of \$20,000.

16 **3.3.3 Payment Address:** All payments to The Chanler Group shall be
17 delivered to the following payment address:

18 The Chanler Group
19 Attn: Proposition 65 Controller
20 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Plaintiff’s Public Release of Proposition 65 Claims**

23 Dr. Held, acting on his own behalf and in the public interest, releases CMC Golf, its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 attorneys and each entity to whom CMC Golf directly or indirectly distributes or sells Products,
26 including, but not limited to, downstream distributors, wholesalers, customers, retailers,
27 franchisees, cooperative members, and licensees (“Releasees”), from all claims for violations of
28 Proposition 65 up through the Effective Date based on exposure to DEHP from the Products as

1 set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
2 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set
3 forth in the Notice.

4 **4.2 Plaintiff's Individual Release of Claims**

5 Dr. Held, in his individual capacity only and not in his representative capacity, as well as
6 his attorneys and other representatives, provide a release herein which shall be effective as a full
7 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
8 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature,
9 character or kind that each of them now has, ever had or ever could have against CMC Golf, its
10 attorneys and other representatives, whether known or unknown, suspected or unsuspected,
11 limited to and arising out of alleged or actual exposures to DEHP through the Effective Date
12 from the Products manufactured, imported, distributed, sold and/or offered for sale by CMC
13 Golf.

14 **4.3 Defendant's Release of Plaintiff**

15 CMC Golf on behalf of itself, its past and current agents, representatives, attorneys,
16 successors, and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys
17 and other representatives, for any and all actions taken or statements made (or those that could
18 have been taken or made) by Dr. Held and his attorneys and other representatives through the
19 Effective Date, whether in the course of investigating claims or otherwise seeking to enforce
20 Proposition 65 against it in this matter with respect to the Products.

21 **5. SEVERABILITY**

22 If, subsequent to Court approval of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
24 provisions remaining shall not be adversely affected unless the court finds that any unenforceable
25 provision is not severable from the remainder of the Consent Judgment.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within nine

1 months after it has been fully executed by all Parties. In the event this Consent Judgment: (1) is
2 not entered by the Court within nine months (or thereafter) for any reason whatsoever; or (2) is
3 entered by the Court and subsequently overturned by any appellate court, any monies that have
4 been provided to Dr. Held, or his counsel pursuant to Section 3 above, shall be refunded within
5 fifteen (15) days after receiving written demand from CMC Golf for return of such funds is made
6 to:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
13 inapplicable by reason of law generally, or as to DEHP and/or the Products, then CMC Golf shall
14 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
15 that, the Products are so affected.

16 **8. NOTICES**

17 When any Party is entitled to receive any notice under this Consent Judgment, the notice
18 shall be sent by certified mail and electronic mail to the person(s) identified below:

19 To CMC Golf, Inc.:

20 Bob Burg, President
21 CMC Golf, Inc.
22 15695 North 83rd Way
 Scottsdale, AZ 85260

To Dr. Held:

 The Chanler Group
 Attn: Proposition 65 Coordinator
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

23 With copy to:

24 Julie Schwartz, Esq.
25 Squire Sanders (US) LLP
26 275 Battery Street, suite 2600
 San Francisco, CA 94111

1 Any Party may modify the person and address to whom the notice is to be sent by
2 sending each other Party notice by certified mail and/or other verifiable form of written
3 communication.

4 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

7 **10. MODIFICATION**

8 This Consent Judgment may be modified only: (1) by written agreement of the Parties
9 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
10 motion of any Party and entry of a modified Consent Judgment by the Court.

11 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

12 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
13 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
14 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
15 Health and Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
16 Consent Judgment, which Dr. Held shall file and which CMC Golf shall not oppose. If any third
17 party objection to the noticed motion is filed, Dr. Held and CMC Golf shall work together to file a
18 joint reply and appear at any hearing before the Court. This provision is a material component of
19 the Consent Judgment and shall be treated as such in the event of a breach. If the Court does not
20 approve the motion to approve this Consent Judgment, and the Parties choose not to pursue a
21 modified Consent Judgment within thirty (30) days of said denial, or in the event that the Court
22 approves this Consent Judgment and any person successfully appeals that approval, all payments
23 made pursuant to this Consent Judgment will be returned to CMC Golf within fifteen (15) days.

24 **12. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

3 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile or portable
5 document format (".pdf"), each of which shall be deemed an original, and all of which, when
6 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall be
7 as valid as the original.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read,
10 understood, and agree to all of the terms and conditions of this Consent Judgment.

11 **15. ENFORCEMENT**

12 Any Party may, by motion or application for an order to show cause before this Court,
13 enforce the terms and conditions in this Consent Judgment.

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AGREED TO: **APPROVED**
By Tony Held at 10:11 am, Aug 17, 2012

AGREED TO:
Date: _____

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

By: _____
Bob Burg, President
CMC Golf, Inc.

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9 The undersigned are authorized to execute this Consent Judgment and have read,
10 understood, and agree to all of the terms and conditions of this Consent Judgment.

11 **15. ENFORCEMENT**

12 Any Party may, by motion or application for an order to show cause before this Court,
13 enforce the terms and conditions in this Consent Judgment.

14
15 **AGREED TO:**

16 Date: _____

17
18 By: _____
19 Plaintiff Anthony E. Held, Ph.D., P.E.

AGREED TO:

20 Date: 8-23-12

21 By: Bob Burg
22 Bob Burg, President
23 CMC Golf, Inc.
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