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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,)

13 Plaintiff,)

14 v.)

15 SAM ASH MUSIC CORPORATION; *et al.*,)

16 Defendants.)
17 _____)

Case No. RG14716073

[PROPOSED] CONSENT JUDGMENT

Action Filed: March 4, 2014

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Sam Ash Music Corporation**

3 This Proposed Consent Judgment (“Consent Judgment”) is entered into by and between
4 plaintiff Anthony E. Held, Ph.D., P.E. (“Held” or “Plaintiff”) and defendant Sam Ash Music
5 Corporation (“Sam Ash” or “Defendant”) with Plaintiff and Defendant collectively referred to as
6 the “Parties.”

7 **1.2 Anthony E. Held, Ph.D., P.E.**

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

11 **1.3 Sam Ash Music Corporation**

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

15 **1.4 General Allegations**

16 Held alleges that Defendant has manufactured, imported, distributed and/or sold in the State
17 of California benches with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”).
18 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as *Benjamin Adams*
22 *Wood Piano Bench, Art. No.: 108-1BK/B-108-1, GWPB100XX, PB13C0024, UPC #8 09164 01116*
23 3, which are manufactured, imported, distributed, sold and/or offered for sale by Defendant in the
24 State of California (hereinafter, the “Products”).

25 **1.6 Notice of Violation**

26 On October 18, 2013, Held served Sam Ash, others and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the
28

1 recipients with notice that Sam Ash was alleged to be in violation of California Health & Safety
2 Code § 25249.6 for failing to warn consumers that its benches with vinyl/PVC upholstery exposed
3 users in California to DEHP.

4 **1.7 Complaint**

5 On March 4, 2014, Held filed a complaint in the Superior Court in and for the County of
6 Alameda against Sam Ash, Samson Technologies Corp. and Does 1 through 150, *Held v. Sam Ash*
7 *Music Corporation, et al.*, Case No. RG14716073 (the “Action”), alleging violations of California
8 Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain
9 benches with vinyl/PVC upholstery sold by Defendant in the State of California.

10 **1.8 No Admission**

11 Defendant denies the material, factual and legal allegations contained in Held’s Notice and
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
15 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute
16 or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
17 violation of law. However, this section shall not diminish or otherwise affect Defendant’s
18 obligations, 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 Defendant as to the allegations contained in the Complaint, that venue is proper in
22 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
23 this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
26 Court approves and enters this Consent Judgment.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
6 federal or state government agencies for the purpose of determining DEHP content in a solid
7 substance .

8 **2.2 Reformulation Commitment**

9 As of the Effective Date, the Products manufactured, imported, distributed, sold and/or
10 offered for sale in the State of California by Defendant shall be Products that qualify as
11 Reformulated Products as defined in Section 2.1 above, or shall carry the appropriate Proposition 65
12 warning specified in Section 2.3 below.

13 **2.3 Product Warnings**

14 As of the Effective Date, Sam Ash shall provide clear and reasonable warnings for the
15 Products as set forth in subsections 2.3(a) and (b) that do not qualify as Reformulated Products.
16 Each warning shall be prominently placed with such conspicuousness as compared with other
17 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. Each warning shall be provided in a
19 manner such that the consumer or user understands to which *specific* Product the warning applies,
20 so as to minimize the risk of consumer confusion.

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

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

24 WARNING: This product contains chemicals, including
25 DEHP, known to the State of California
26 to cause birth defects and other reproductive harm.
27
28

1 (ii) **Point-of-Sale Warnings.** Alternatively, Sam Ash may provide warning
2 signs in the form below to its customers in California with instructions to post the warnings in close
3 proximity to the point of display of the Products.

4 WARNING: This product contains chemicals, including
5 DEHP, known to the State of California
6 to cause birth defects and other reproductive harm.

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

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

14 (b) **Mail Order Catalog and Internet Sales.** In the event Sam Ash sells Products via
15 mail order catalog and/or the internet to customers located in California after the Effective Date that
16 are not Reformulated Products, Sam Ash shall provide warnings for such Products sold via mail
17 order catalog (in mail order catalogs printed after the Effective Date) or the internet to California
18 residents. Warnings given in the mail order catalog or on the internet shall identify the *specific*
19 Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

20 (i) **Mail Order Catalog Warning.** The following provision and requirements
21 pertain to mail order catalogs printed after the Effective Date. Any warning provided in a mail
22 order catalog shall be in the same type size or larger than the Product description text within the
23 catalog. The following warning shall be provided on the same page and in the same location as the
24 display and/or description of the Product:

25 WARNING: This product contains chemicals, including
26 DEHP, known to the State of California
27 to cause birth defects and other reproductive harm.

28 Where it is impracticable to provide the warning on the same page and in the same location

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar 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 the subject of the warning sign.

1 as the display and/or description of the Product, Sam Ash may utilize a designated symbol to cross
2 reference the applicable warning and shall define the term “designated symbol” with the following
3 language on the inside of the front cover of the catalog or on the same page as any order form for
4 the Product(s):

5 WARNING: Certain products identified with this symbol ▼
6 and offered for sale in this catalog, contain
7 chemicals, including DEHP, known to the State of
8 California to cause birth defects and other reproductive harm.

9 The designated symbol must appear on the same page and in close proximity to the display
10 and/or description of the Product. On each page where the designated symbol appears, Sam Ash
11 must provide a header or footer directing the consumer to the warning language and definition of
12 the designated symbol.

13 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
14 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
15 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
16 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
17 purchaser during the checkout process. The following warning statement shall be used and shall
18 appear in any of the above instances adjacent to or immediately following the display, description,
19 or price of the Product for which it is given in the same type size or larger than the Product
20 description text:

21 WARNING: This product contains chemicals, including
22 DEHP, known to the State of California
23 to cause birth defects and other reproductive harm.

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

27 WARNING: This product contains chemicals, including
28 DEHP, known to the State of California
 to cause birth defects and other reproductive harm.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payments**

3 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a
4 total of \$14,000 in civil penalties in accordance with this Section. Each penalty payment will be
5 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
6 the funds remitted to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) and the remaining 25% of the penalty remitted to Held. Each penalty payment shall be
8 made within two business days of the date it is due and be delivered to the addresses listed in
9 Section 3.3 below. Sam Ash shall be liable for payment of interest, at a rate of 10% simple interest,
10 for all amounts due and owing under this Section and Section 4 that are not received within two
11 business days of the due date.

12 **3.1.1 Initial Civil Penalty**

13 Within five days of the mutual execution of this Consent Judgment, Sam Ash shall
14 pay an initial civil penalty of \$4,000. Sam Ash shall issue checks for its initial civil penalty
15 payment in the amount of \$3,000 to “OEHHA” and in the amount of \$1,000 to “Dr. Anthony E.
16 Held, Client Trust Account.” Katten Muchin Rosenman LLP shall hold these checks and shall
17 provide The Chanler Group with written confirmation that it has received and is holding these
18 checks. Within two days of the date that this Consent Judgment is approved by the Court, Katten
19 Muchin Rosenman LLP shall send the two separate checks for the initial civil penalty payment to:
20 (a) “OEHHA” in the amount of \$3,000; and (b) “Dr. Anthony E. Held, Client Trust Account” in the
21 amount of \$1,000.

22 **3.1.2 Final Civil Penalty**

23 Sam Ash shall pay a final civil penalty of \$10,000 on or before March 1, 2015. The
24 final civil penalty shall be waived in its entirety, however, if, no later than February 15, 2015, an
25 officer of Sam Ash provides Held with written certification that, as of the date of such certification
26 and continuing into the future, all Products manufactured, imported, distributed, sold and offered for
27 sale in California by, or on behalf of, Defendant are Reformulated Products. Held must receive any
28 such certification on or before February 15, 2015. The certification in lieu of a final civil penalty

1 payment provided by this Section is a material term, and time is of the essence. Defendant shall
2 issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of
3 \$7,500; and (b) “Dr. Anthony Held, Client Trust Account” in the amount of \$2,500.

4 **3.2 Reimbursement of Fees and Costs**

5 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 issue to be resolved after the material terms of the agreement had been settled. Held then
8 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
9 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held
10 and his counsel under general contract principles and the private attorney general doctrine codified
11 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
12 execution of this agreement. Sam Ash shall, within five days of the mutual execution of this
13 Consent Judgment by the Parties, issue a check payable to “The Chanler Group” in the amount of
14 \$26,000 to be held by Katten Muchin Rosenman LLP. Katten Muchin Rosenman LLP shall provide
15 The Chanler Group with written confirmation within five days of receipt that it has received and is
16 holding this check. Within two business days of the date this Consent Judgment is approved by the
17 Court, Katten Muchin Rosenman LLP shall send this check to “The Chanler Group” at the address
18 found in Section 8 below.

19 **3.3 Payment Procedures**

20 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 21 (a) All payments owed to Held and his counsel, pursuant to Sections 3.1
22 through 3.2, shall be delivered to the following payment address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

- 28 (b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2,
shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
at the following address:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 With a copy of the checks payable to OEHHA mailed to The Chanler
7 Group at the address set forth above in 3.3.1(a), as proof of payment to
8 OEHHA.

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Held's Public Release of Proposition 65 Claims**

11 Held, acting on his own behalf and in the public interest, releases Sam Ash, Samson
12 Technologies Corporation, and their parents, subsidiaries, partners, affiliated entities under common
13 ownership, joint ventures, directors, officers, employees, and attorneys ("Releasees") and each
14 entity to whom they directly or indirectly distribute or sell the Products including, but not limited to,
15 their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
16 licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65
17 for unwarned exposures to DEHP from the Products sold by Defendant prior to the Effective Date,
18 as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 with respect to exposures to DEHP from the Products.

20 **4.2 Held's Individual Release of Claims**

21 Held, in his individual capacity only and *not* in his representative capacity, also provides a
22 release to Sam Ash, Samson Technologies Corporation, and Releasees, and Downstream Releasees
23 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
24 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
25 of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected,
26 arising out of alleged or actual exposures to DEHP in the Products sold or distributed for sale by
27 Defendant before the Effective Date.
28

1 **4.3 Sam Ash’s Release of Held**

2 Sam Ash on behalf of itself, its past and current agents, representatives, attorneys,
3 successors and/or assignees, hereby waives any and all claims against Held, his attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been
5 taken or made) by Held and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
7 respect to the Products.

8 **5. COURT APPROVAL**

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

12 **6. PARTIAL SATISFACTION OF JUDGMENT**

13 Within five business days following receipt of the settlement payments as set forth in
14 Sections 3.1 and 3.2, above, Held will file an Acknowledgement of Satisfaction of Judgment (EJ-
15 100) indicating within subsection 1(b) that Defendant has satisfied all monetary obligations, yet
16 injunctive relief obligations remain ongoing. Held will provide Sam Ash with a conformed copy of
17 the Acknowledgement of Satisfaction of Judgment (EJ-100).

18 **7. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
21 remaining shall not be adversely affected.

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California.
24 In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by
25 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
26 inapplicable or no longer required as a result of any such repeal or preemption or rendered
27 inapplicable by reason of law generally as to the Products, then Defendant may provide written
28 notice to Held of any asserted change in the law, and shall have no further obligations pursuant to

1 this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing
2 in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply
3 with any pertinent state or federal toxics control law.

4 **9. NOTICES**

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

9 To Sam Ash Music Corporation:

10 Julia A. Miller, Esq.
11 Katten Muchin Rosenman LLP
12 1999 Harrison Street, Suite 700
Oakland, CA 94612-4704

To Anthony E. Held, Ph.D., P.E.:

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

13 Any party, from time to time, may specify in writing to the other party a change of address
14 to which all notices and other communications shall be sent.

15 **10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
17 each of which shall be deemed an original, and all of which, when taken together, shall constitute
18 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

22 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The Parties agree to mutually employ their best efforts to support the entry of this agreement
24 as a Consent Judgment and obtain approval of the Proposed Consent Judgment by the Court in a
25 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code §
26 25249.7, a noticed motion is required to obtain judicial approval of this Proposed Consent
27 Judgment, which Held shall draft and file, and Defendant shall join. If any third party objection to
28 the noticed motion is filed, Held and Defendant shall work together to file a joint reply and appear

1 at any hearing before the Court. This provision is a material component of the Consent Judgment
2 and shall be treated as such in the event of a breach.

3 **13. MODIFICATION**

4 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
5 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
6 of any party and entry of a modified Consent Judgment by the Court.

7 **14. AUTHORIZATION**

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

11
12 AGREED TO:

AGREED TO:

13
14 Date: December 12, 2014

Date: 12/8/2014

15
16 By: Anthony E. Held

Anthony E. Held, Ph.D., P.E.

By: David Charles Ash

David Ash, Chief Executive Officer and
General Counsel
Sam Ash Music Corporation