

1 Christopher C. Moscone, SBN 170250
Rachel J. Sater, SBN 147976
2 MOSCONE EMBLIDGE SATER & OTIS LLP
220 Montgomery Street, Suite 2100
3 San Francisco, CA 94104
Tel. (415) 362-3599
4 Fax: (415) 362-2006

5 Clifford A. Chanler, SBN 135534
THE CHANLER GROUP
6 2560 Ninth Street
Parker Plaza, Suite 214
7 Berkeley, CA 94710
Tel. (510) 848-8880
8 Fax: (510) 848-8118

9 Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 ANTHONY E. HELD, PhD., P.E.,

14 Plaintiff,

15 v.

16 STARZ MEDIA, LLC; ANCHOR BAY
17 ENTERTAINMENT, LLC; COSTCO
WHOLESALE CORPORATION; and
18 DOES 1 – 100, inclusive,

19 Defendants.

Case No. CGC 14-538127

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANTS STARZ MEDIA, LLC
AND ANCHOR BAY ENTERTAINMENT,
LLC**

(Health & Safety Code § 25249.5 *et seq.*)

20
21
22
23
24
25
26
27
28 [PROPOSED] CONSENT JUDGMENT AS TO DEFENDANTS STARZ MEDIA LLC AND ANCHOR BAY LLC

ACTIVE 202203162v.2

ACTIVE 202320056v.1

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD., P.E.
4 (“Plaintiff”) and defendants Starz Media, LLC and Anchor Bay Entertainment, LLC
5 (“Defendants”), with Plaintiff and Defendants each referred to individually as a “Party” and
6 collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Plaintiff is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Defendants employ ten or more persons and each 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 and
14 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 **1.4.1** Plaintiff alleges that Defendants manufactured, imported, sold and/or
17 distributed for sale in California, exercise balls containing Di(2-ethylhexyl)phthalate (“DEHP”)
18 without providing the clear and reasonable health hazard warnings required by Proposition 65.

19 **1.4.2** Plaintiff alleges that exposure to DEHP occurs via ingestion from hand to
20 mouth transfer and via dermal contact with exercise balls.

21 **1.5 Product Description**

22 The category of products covered by this Consent Judgment is vinyl/PVC exercise balls
23 including, but not limited to, the Weight Watchers Work Your Belly, Butt & Thighs Stability Ball
24 Workout, #674926, UPC #0 13132 42009 7 (hereinafter “Products”).

25 **1.6 Notices of Violation**

26

27

1 On October 25, 2013, Plaintiff served Defendants and certain requisite public enforcement
2 agencies with 60-Day Notices of Violation (“Notice”) alleging that Defendants violated Proposition
3 65 when they failed to warn customers, consumers, and workers in California that the Products
4 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced
5 and is diligently prosecuting the allegations set forth in the Notice.

6 **1.7 Complaint**

7 On March 20, 2014, Plaintiff commenced the instant action (“Complaint”), the operative
8 pleading in this action, naming each of the Defendants as a defendant, and asserting a cause of
9 action for the alleged violations of Proposition 65 that are the subject of the Notice.

10 **1.8 No Admission**

11 Defendants deny the material, factual, and legal allegations contained in the Notice and
12 Complaint and maintain that all of the products they have sold or distributed for sale in California,
13 including the Products, have been and are in compliance with all laws. Nothing in this Consent
14 Judgment shall be construed as an admission by Defendants of any fact, finding, conclusion of law,
15 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
16 construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or
17 violation of law. This Section shall not, however, diminish or otherwise affect Defendants’
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 Defendants as to the allegations contained in the Complaint, that venue is proper in
22 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
23 of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
24 664.6.

25 **2. DEFINITIONS**

26 **2.1 California Customer**

1 “California Customer” shall mean any customer of Defendants that Defendants reasonably
2 understand are located in California, have a California warehouse or distribution center, maintain a
3 retail outlet in California, or have distributed Products for sale in California, online via the internet
4 or by any other means.

5 **2.2 Reformulated Products**

6 “Reformulated Products” shall mean Products that contain no more than 1000 parts per
7 million (“ppm”) (0.1%) of DEHP in any material, component, or constituent of a Product, when
8 analyzed by a laboratory accredited by NVLAP (National Volunteer Laboratory Accreditation
9 Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National
10 Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation
11 Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory
12 Accreditation, Inc. (PJLA), or International Laboratory Accreditation Cooperation (ILAC) (such
13 laboratory referred to as an “Accredited Lab”) pursuant to EPA testing methodologies 3580 and
14 8270C, or equivalent methodologies utilized by such Accredited Laboratory or federal or state
15 agencies to determine the presence, or measure the amount, of DEHP in a solid substance (such
16 methodologies referred to as “Approved Methodologies”).

17 **2.3 Effective Date**

18 “Effective Date” shall mean April 15, 2014.

19 **3. INJUNCTIVE RELIEF: REFORMULATION**

20 **3.1 Reformulation Commitment**

21 Commencing on the Effective Date, and continuing thereafter, Defendants shall not
22 manufacture or import for distribution or sale to California Customers for sale in California, or
23 cause to be manufactured or imported for distribution or sale to California Customers for sale in
24 California, any Products that are not Reformulated Products.

25 **4. MONETARY PAYMENTS**

26 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

1 In settlement of all the claims referred to in this Consent Judgment, Defendants shall pay the
2 sum of \$12,000 as civil penalties. The civil penalty payment will be allocated in accordance with
3 California Health & Safety Code section 25249.12(c)(1) and (d), with 75% of the funds remitted to
4 the California Office of Environmental Health Hazard Assessment (“OEHHA”), 25% of the penalty
5 remitted to “Anthony E. Held, Client Trust Account.” The civil penalty payment shall be delivered
6 on the date due as set forth below at the addresses provided below. Defendants shall be liable for
7 payment of simple interest at a rate of 10% for all amounts due and owing that are not received
8 within two business days of the date they are due, if any.

9 **4.1.1 Initial Civil Penalty**

10 Within five business days of the date this Consent Judgment is entered by the Court,
11 Defendants shall make an initial civil penalty payment of \$6,000.

12 **4.1.2 Second Civil Penalty**

13 Within one year of the date this Consent Judgment is entered by the Court, Defendants shall
14 make a second civil penalty payment of \$6,000. The amount of the second penalty may be reduced
15 according to the penalty waiver below.

16 **4.1.3 Reductions to Civil Penalty Payment Amounts**

17 The second civil penalty payment will be waived if Defendants provide Plaintiff with
18 certification that commencing May 1, 2014 and continuing thereafter, Defendants will not sell to
19 California Customers for sale in California, any Products that are not Reformulated Products. An
20 officer or other authorized representative shall provide Plaintiff with a written certification
21 confirming compliance with this condition no later than June 30, 2014. The option to provide a
22 written certification in lieu of making the second civil penalty payment constitutes a material term
23 of this Consent Judgment, and with regard to such term, time is of the essence.

24 **4.2 Representations and Warranties**

25 Defendants represent that the sales data and information concerning size, knowledge of
26 DEHP presence, and prior reformulation and/or warning efforts, provided to Plaintiff were true and
27

1 accurate based on their knowledge and are material factors upon which Plaintiff relied to determine
2 the amount of civil penalties assessed pursuant to Health and Safety Code section 25249.7(b). If,
3 within nine months of the Effective Date, Plaintiff discovers and presents to Defendants, evidence
4 demonstrating that the preceding representation and warranty was materially inaccurate, then
5 Defendants shall have 30 days to meet and confer regarding Plaintiff's contention. Should this 30
6 day period pass without any resolution between Plaintiff and Defendants, Plaintiff shall be entitled
7 to file a formal legal claim including, but not limited to, a claim for damages for breach of contract;
8 Defendants reserve all defenses respecting any such claim.

9 **4.3 Reimbursement of Fees and Costs**

10 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the fee
12 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
13 other settlement terms had been finalized, Defendants expressed a desire to resolve Plaintiff's
14 outstanding fees and costs. Under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
16 through the mutual execution of this agreement, including the fees and costs incurred as a result of
17 investigating, bringing this matter to Defendants' attention, negotiating a settlement in the public
18 interest, and seeking court approval of the same. Defendants agree to pay Plaintiff, within five
19 business days of the Court's approval and entry of this Consent Judgment, fees and costs in the
20 amount of \$31,500.

21 **4.4 Payment Procedures**

22 **4.4.1 Payment Addresses.**

23 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
24 4.1 and 4.3 shall be delivered to the following address:

25 Moscone Emblidge Sater & Otis LLP
26 Attn: Proposition 65 Coordinator
27 220 Montgomery Street, Suite 2100
28 San Francisco, CA 94104

1 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be
2 delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses, as
3 appropriate:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

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

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 4.4.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to Moscone Emblidge Sater & Otis at the address set
14 forth in Section 4.3.1(a) above.

15 4.4.3 **Tax Documentation.** Defendants shall provide a separate 1099 form for
16 each payment required by this Consent Judgment to: (a) Plaintiff, whose address and tax
17 identification number shall be furnished upon request after this Consent Judgment has been fully
18 executed by the Parties; (b) “California Office of Environmental Health Hazard Assessment”; and
19 (c) Moscone Emblidge Sater & Otis LLP, and deliver such form to the payee at the payment
20 addresses provided in Section 4.4.1, above.

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1 Plaintiff’s Release of Proposition 65 Claims**

23 Plaintiff, acting on his own behalf and in the public interest, releases Defendants, their
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
25 employees, attorneys, and each entity to whom Defendants directly or indirectly distribute or sell
26 the Products, including, but not limited, to downstream distributors, wholesalers, customers,
27

1 retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all
2 claims alleging violations of Proposition 65 through the Effective Date based on unwarned
3 exposures to DEHP in the Products, as set forth in the Notice. Compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP
5 from the Products, as set forth in the Notice.

6 5.2 Plaintiff’s Individual Releases of Claims

7 Plaintiff, in his individual capacity only and *not* in any representative capacity, provides a
8 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
9 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
10 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
11 unsuspected, limited to and arising out of alleged or actual exposures to DEHP in Products
12 manufactured, imported, distributed, or sold by Defendants prior to the Effective Date.

13 5.3 Defendants’ Release of Plaintiff

14 Defendants, on their own behalf, and on behalf of their past and current agents,
15 representatives, attorneys, successors, and assignees, hereby waive any and all claims against
16 Plaintiff and his attorneys and other representatives, through the Effective Date, for any and all
17 actions taken or statements made (or those that could have been taken or made) by Plaintiff and his
18 attorneys and other representatives, whether in the course of investigating claims, otherwise seeking
19 to enforce Proposition 65 against it in this matter, or with respect to the Products.

20 6. COURT APPROVAL

21 This Consent Judgment is not effective until it is approved in its entirety and entered by the
22 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
23 within one year after it has been fully executed by all Parties. Plaintiff and Defendants agree to
24 support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent
25 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
26 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this

1 Consent Judgment, which motion Plaintiff shall draft and file and Defendants shall support,
2 appearing at the hearing if so requested. If any third-party objection to the motion is filed, Plaintiff
3 and Defendants agree to work together to file a reply and appear at any hearing. This provision is a
4 material component of the Consent Judgment and shall be treated as such in the event of a breach.

5 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as to
6 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
7 of action to take, then the case shall proceed in its normal course on the Court's trial calendar. If
8 the Court's approval is ultimately overturned by an appellate court, the Parties shall meet and
9 confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly
10 agree on a course of action to take, then the case shall proceed in its normal course on the Court's
11 trial calendar. In the event that this Consent Judgment is entered by the Court and subsequently
12 overturned by any appellate court, any monies that have been provided to OEHHA, Plaintiff or his
13 counsel pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision
14 becoming final.

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California.
17 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
18 reason of law generally, or as to the Products, then Defendants may provide Plaintiff with notice of
19 any asserted change in the law, and shall have no further obligations pursuant to this Consent
20 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
21 Consent Judgment shall be interpreted to relieve Defendants from their obligation to comply with
22 any pertinent state or federal law or regulation.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
26
27

1 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any
2 Party by the other at the following addresses:

3 To Defendants:

To Plaintiff:

4 Attn: Cindy Chen
5 Vice President, Business and Legal Affairs
6 Starz Media, LLC
7 9242 Beverly Blvd., Suite 201
8 Beverly Hills, CA 90210

Attn: Proposition 65 Coordinator
Moscone Emblidge Sater & Otis LLP
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

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

11 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

15 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

16 Plaintiff and his counsel agree to comply with the reporting form requirements referenced in
17 California Health and Safety Code section 25249.7(f).

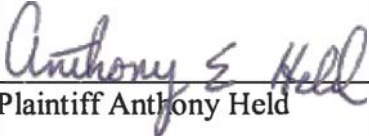
18 **11. MODIFICATION**

19 This Consent Judgment may be modified only: (i) by written agreement of the Parties and
20 upon entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion
21 of any party and entry of a modified Consent Judgment by the Court.

1 **12. AUTHORIZATION**

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

5 **AGREED TO:**

6 
7 _____
8 Plaintiff Anthony Held

AGREED TO:



Defendants STARZ MEDIA, LLC AND
ANCHOR BAY ENTERTAINMENT, LLC

9
10 Dated: 7/3/2014 _____

Dated: _____

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28