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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD, PH.D., P.E.,

14 Plaintiff,

15 v.

16 AKERUE INDUSTRIES, LLC., *et al.*

17 Defendants.

Case No. 114-CV-269541

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held PH. D.,
4 P.E. (“Held”) and defendant Akerue Industries, LLC (“Akerue”), with Held and Akerue each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Akerue 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, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Akerue manufactures, imports, sells and/or distributes for sale in
16 California, portable stove bags containing lead, and that it does so without providing the health
17 hazard warning that Held alleges is required by Proposition 65. Plaintiff alleges that he tested both
18 for total lead content and for the surface lead content pursuant to a “wipe” test in an effort to mimic
19 a reasonably foreseeable use and the results of those tests concluded that the portable stove bags
20 contained lead in amounts that exceed the State’s limits for lead content.

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are portable stove bags containing lead,
23 including, but not limited to, the *Century Stove Bag, UPC #0 47977 00166 1* (collectively,
24 “Products”).

25 **1.6 Notice of Violation**

26 On April 30, 2014, Held served Akerue and the requisite public enforcement agencies with a
27 60-Day Notice of Violation (“Notice”), alleging that Akerue violated Proposition 65 when it failed
28 to warn its customers and consumers in California that the Products expose users to lead. To the best

1 of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action
2 to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 15, 2015, Held commenced the instant action, naming Akerue as a defendant for
5 the alleged violations of Proposition 65 that are the subject of the Notice ("Complaint").

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Akerue as to the allegations contained in the Complaint, that venue is proper in the
18 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
23 including the date of any tentative ruling granting approval that is unopposed.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Akeure agrees to only
27 manufacture, distribute, or purchase for sale in or into California: (a) "Reformulated Products", or
28 (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2

1 below. For purposes of this Consent Judgment, “Reformulated Products” are defined as “Products”
2 with a maximum lead concentration 0.009 percent (90 parts per million) when analyzed pursuant to
3 U.S. Environmental Protection Agency testing methodologies 3050B and 6010B, or other
4 methodologies utilized by state or federal agencies for the purpose of determining Lead content in a
5 solid substance.

6 **2.2 Clear and Reasonable Warnings**

7 Akerue agrees that as of Effective Date, all Products it sells and/or distributes in California
8 which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant
9 to this Section. Akerue further agrees that the warning will be prominently placed with such
10 conspicuousness when compared with other words, statements, designs, or devices as to render it
11 likely to read and understood by an ordinary individual under customary conditions before purchase
12 or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products
13 shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in
14 California and containing one of the following statements:

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

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18 or

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20 **WARNING:** This product contains one or more chemicals, including lead,
known to the state of California to cause cancer and birth defects
or other reproductive harm. Wash hands after handling.

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Civil Penalty Payment**

23 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
24 claims referred to in this Consent Judgment, Akerue shall pay \$2,000 in civil penalties in
25 accordance with this Section. Each penalty payment will be allocated in accordance with California
26 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
27 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
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1 penalty remitted to Held. Held’s counsel shall be responsible for remitting Akerue’s penalty
2 payment(s) under this Consent Judgment to OEHHA.

3 **3.2 Reimbursement of Attorneys’ Fees and Costs**

4 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
6 to be resolved after the material terms of the agreement had been settled. Shortly after the other
7 settlement terms had been finalized, Akerue expressed a desire to resolve Held’s fees and costs.
8 The Parties then negotiated a resolution of the compensation due to Held and his counsel under
9 general contract principles and the private attorney general doctrine codified at California Code of
10 Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement
11 and the Court’s approval of the same, Akerue shall reimburse Held and his counsel \$8,000.
12 Akerue’s payment shall be delivered to the address in Section 3.4 in the form of a check payable to
13 “The Chanler Group.” The reimbursement shall cover all fees and costs incurred by Held
14 investigating, bringing this matter to Akerue’s attention, litigating, and negotiating a settlement of
15 the matter in the public interest, and obtaining the Court’s approval of the same.

16 **3.3 Payments Held In Trust**

17 Akerue shall deliver all payments required by this Consent Judgment to its counsel within
18 fifteen (15) days of the date that this agreement is fully executed by the Parties. Akerue’s counsel
19 shall confirm receipt of settlement funds in writing to Held’s counsel and, thereafter, hold the
20 amounts paid in trust until such time as the Court grants the motion for approval of the Parties’
21 settlement contemplated by Section 5. Within five (5) days of the Effective Date, Akerue’s
22 counsel shall deliver all settlement payments it has held in trust to Held’s counsel at the address
23 provided in Section 3.4. In the event the final civil penalty payment required by Section 3.1.2
24 becomes due prior to the Effective Date, then Akerue shall deliver the final civil penalty payment
25 to its attorney to be held in trust until, and disbursed within two days after, the Effective Date.
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1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Held’s Release of Proposition 65 Claims**

10 Held, acting on his own behalf and in the public interest, releases Akerue and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys (“Releasees”) and each entity to whom Akerue directly or indirectly distributes or sells
13 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
14 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
15 any violations arising under Proposition 65 for unwarned exposures to Lead from the Products
16 manufactured, imported, distributed or sold by Akerue prior to the Effective Date, as set forth in the
17 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
18 Proposition 65 by Akerue with respect to the alleged or actual failure to warn about exposures to
19 lead from Products manufactured, sold or distributed for sale by Akerue after the Effective Date.

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 Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
23 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
24 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
25 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
26 exposures to lead in Products manufactured, imported, distributed or sold by Akerue before the
27 Effective Date.

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4.3 Akerue’s Release of Held

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

5. 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 all Parties. Held and Akerue agree to support the entry of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall draft and file and Akerue shall support, appearing at the hearing if so requested. If any third-party objection to the motion is filed, Held and Akerue agree to work together to file a reply and appear at any hearing. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

6. SEVERABILITY

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

7. 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Akerue may provide Held with written notice of any asserted change in the law, and shall have no further

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

4 **8. NOTICE**

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

9 To Akerue:

10 Patrick J. Kearns, Esq.
11 Wilson, Elser, Moskowitz,
12 Edelman & Dicker, LLP
13 655 West Broadway, Suite 900
14 San Diego, CA 92101

To Held:

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

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

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

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

20 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

21 Held and his counsel agree to comply with the reporting form requirements referenced in
22 California Health and Safety Code section 25249.7(f).

23 **11. MODIFICATION**

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

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12. 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:

Anthony E. Held
ANTHONY E. HELD, PH.D., P.E.

Dated: 9/28/2015

AGREED TO:

John J. Murray, CEO
AKERUE INDUSTRIES, LLC

By: JOHN J MURRAY
(Print Name)

Its: CHIEF EXECUTIVE OFFICER
(Title)

Dated: 22 SEPTEMBER 2015