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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
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18 ANTHONY E. HELD, PH.D., P.E.,
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20 Plaintiff,
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22 v.
23 CWC INVENTORIES, INC., *et al.*
24
25 Defendants.

26 Case No. CGC 15543958
27
28 **[PROPOSED] CONSENT JUDGMENT**
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held (“Held”)
4 and defendant CWC Inventories, Inc. (“CWC”), with Held and CWC each referred to individually
5 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 CWC 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”). CWC does not manufacture products, but
14 distributes products manufactured by unrelated third parties. CWC specializes in inventory surplus
15 and close outs.

16 **1.4 General Allegations**

17 Held alleges that CWC manufactures, imports, sells and/or distributes for sale in California,
18 walking sticks with vinyl/PVC grips containing Lead and/or di(2-ethylhexyl)phthalate (“DEHP”),
19 and that it does so without providing the health hazard warning that Held alleges is required by
20 Proposition 65. CWC contends that it did not manufacture walking sticks with vinyl/PVC grips
21 containing Lead and/or DEHP for sale in California.

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are walking sticks with vinyl/PVC grips
24 containing Lead and/or DEHP, including but not limited to, the *Kodula Walking Stick, UPS #7*
25 *83010 10855 2* (collectively, “Products”).

26 **1.6 Notice of Violation**

27 On June 20, 2014, Held served CWC and the requisite public enforcement agencies with a
28 60-Day Notice of Violation (“Notice”), alleging that CWC violated Proposition 65 when it failed to

1 warn its customers and consumers in California that the Products expose users to lead and DEHP.
2 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
3 prosecuting an action to enforce the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On February 4, 2015, Held commenced the instant action, naming CWC as a defendant for
6 the alleged violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

8 Nothing in this Consent Judgment shall be construed as an admission by CWC of any fact,
9 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
10 Judgment constitute or be construed as an admission by CWC of any fact, finding, conclusion of
11 law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect
12 CWC's obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
20 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

21 **2. INJUNCTIVE SETTLEMENT TERMS: Reformulated Products and Warnings**

22 **2.1 Commitment to Reformulate or Warn**

23 Commencing on the Effective Date, and continuing thereafter, CWC shall only sell, or
24 purchase for sale, or distribute for sale in California, (a) Reformulated Products, (b) or sold with a
25 Clear and Reasonable Warning pursuant to section 2.2 For purposes of this Consent Judgment,
26 "Reformulated Products" are defined as "Products" that contain: (a) a maximum DEHP
27 concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
28 Environmental Protection Agency testing methodologies 3580A and 8270C, and (b) a maximum

1 Lead concentration of 0.009 percent (90 parts per million) when analyzed pursuant to U.S.
2 Environmental Protection Agency testing methodologies 3050B and 6010B. In addition to the
3 above methodologies, the parties may use other test methods utilized by state or federal agencies for
4 the purpose of determining Lead content in a solid substance.

5 **2.2 Clear and Reasonable Warning**

6 Commencing on the Effective Date and continuing thereafter, for all Products that are not
7 Reformulated Products (i.e. Products that contain more than 1,000 ppm DEHP or more than 90 ppm
8 Lead), CWC agrees that it will only ship, sell, or offer such Products for sale in California with a
9 clear and reasonable warning utilized pursuant to this Section. CWC further agrees that the
10 warning will be prominently placed with such conspicuousness as compared with other words,
11 statements, designs, or devices as to render it likely to be read and understood by an ordinary
12 individual under customary conditions before purchase or use. For purposes of this Consent
13 Judgment, a clear and reasonable warning shall consist of a warning affixed to the packaging, label,
14 tag, or directly to a Product sold in California containing the following statement:

15
16 **WARNING:** This product contains [DEHP and/or Lead], a
17 chemical(s) known to the State of California to cause
cancer and birth defects or other reproductive harm.

18 (hereinafter "Product Warning").

19 **2.3 Vendor Notification/Certification**

20 On or before the effective date, CWC shall issue notice(s) to its manufacturer(s) and
21 supplier(s) of Products requiring that the Products comply with the reformulation standards
22 applicable to DEHP in Section 2.1, above.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

25 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
26 claims referred to in this Consent Judgment, CWC shall pay \$3,800 in civil penalties. The penalty
27 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
28 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard

1 Assessment (“OEHHA”) and the remaining 25% of the penalty retained to Held. CWC shall
2 deliver its penalty payment in a single check made payable to the “Anthony E. Held Client Trust
3 Account.” Held’s counsel shall be responsible for remitting CWC’s penalty payment(s) under this
4 Consent Judgment to OEHHA.

5 **3.2 Reimbursement of Attorneys’ Fees and Costs**

6 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
8 to be resolved after the material terms of the agreement had been settled. Shortly after the other
9 settlement terms had been finalized, CWC expressed a desire to resolve Held’s fees and costs. The
10 Parties then negotiated a resolution of the compensation due to Held and his counsel under general
11 contract principles and the private attorney general doctrine codified at California Code of Civil
12 Procedure § 1021.5. For all work performed through the mutual execution of this agreement and
13 the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, CWC shall
14 reimburse Held and his counsel \$30,000. CWC’s payment shall be due within seven days of the
15 Effective Date, and delivered to the address in Section 3.4 in the form of a check payable to “The
16 Chanler Group.” The reimbursement shall cover all fees and costs incurred by Held investigating,
17 bringing this matter to CWC’s attention, litigating, and negotiating a settlement of the matter in the
18 public interest.

19 **3.3 Payments Held In Trust**

20 CWC shall deliver all payments required by this Consent Judgment to its counsel within
21 one week of the date that this agreement is fully executed by the Parties. CWC’s counsel shall
22 confirm receipt of settlement funds in writing to Held’s counsel and, thereafter, hold the amounts
23 paid in trust until such time as the Court grants the motion for approval of the Parties’ settlement
24 contemplated by Section 5. Within seven days of the Effective Date, CWC’s counsel shall deliver
25 all settlement payments it has held in trust to Held’s counsel at the address provided in Section 3.4.
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3.4 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Held’s Release of Proposition 65 Claims

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

4.2 Held’s Individual Release of Claims

Held, in his individual capacity only and *not* in his representative capacity, also provides a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual

1 exposures to DEHP in Products manufactured, imported, distributed or sold by CWC before the
2 Effective Date.

3 **4.3 CWC's Release of Held**

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

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by all Parties. Held and CWC agree to support the entry of this
14 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
15 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
16 noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall
17 draft and file and CWC shall support, appearing at the hearing if so requested. If any third-party
18 objection to the motion is filed, Held and CWC agree to work together to file a reply and appear at
19 any hearing. This provision is a material component of the Consent Judgment and shall be treated
20 as such in the event of a breach.

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then CWC may

1 provide Held with written notice of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
3 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve CWC from its
4 obligation to comply with any pertinent state or federal law or regulation. If there is a future
5 revision of Title 27, California Code of Regulations, Article 6, § 25601, *et seq.* relating to the
6 content of any warning required for exposures to Lead and/or DEHP from the Products, then CWC
7 may use the statutory warning language required by the regulations to warn of the risks of birth
8 defects and reproductive harm caused by the exposures to Lead and/or DEHP.

9 **8. NOTICE**

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

14 To CWC:

15 Frank Janoski, Esq.
16 Lewis Rice
17 600 Washington Ave., Suite 2500
18 St. Louis, MO 63101-1311

To Held:

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

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

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

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

25 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

26 Held and his counsel agree to comply with the reporting form requirements referenced in
27 California Health and Safety Code section 25249.7(f).
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1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

9
10 **AGREED TO:**

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

13 Dated: 6/19/2015

AGREED TO:

Mark A. Ginsberg
CWC INVENTORIES, INC

14 By: MARK A. GINSBERG
(Print Name)

15 Its: PRESIDENT
(Title)

16 Dated: 6-18-15

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