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10 Attorneys for Defendant GOAL ZERO, LLC

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES
13 UNLIMITED JURISDICTION

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 GOAL ZERO, LLC, et al.,

19 Defendants.

Case No. BC587267

[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code, § 25249.5, et seq.)

20
21 **1. INTRODUCTION**

22 **1.1 Parties**

23 This Consent Judgment is entered into by and between plaintiff Consumer
24 Advocacy Group, Inc. (“CAG”) and defendant Goal Zero, LLC (“Goal Zero”), collectively
25 referred to as the “Parties.”

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1 1.2 **CAG**

2 CAG is a California corporation that serves as a private enforcer of Proposition 65,
3 as described in Proposition 65 and the regulations of the Attorney General of California at
4 11 Cal. Code Regs. § 3000 *et seq.*

5 1.3 **Goal Zero**

6 Goal Zero employs 10 or more persons, and solely for purposes of this Consent
7 Judgment, is a person in the course of doing business for purposes of the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et*
9 *seq.* (“Proposition 65”).

10 1.4 **General Allegations**

11 CAG alleges that Goal Zero has manufactured, imported, distributed and/or sold
12 lanterns that contain di(2-ethylhexyl)phthalate (“DEHP”) without Proposition 65 warnings
13 that are required by law. Goal Zero denies CAG’s allegations.

14 1.5 **Notices of Violation**

15 CAG served Goal Zero and two retailers of Goal Zero products (Sport Chalet, Inc.
16 and Provo Craft and Novelty, Inc.) with a document entitled “60-Day Notice of Intent to
17 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” dated
18 September 4, 2014 (the “Notice”) that provided the recipients with notice of alleged
19 violations of California Health & Safety Code § 25249.6 based on alleged failures to warn
20 consumers and employees in the workplace that certain Covered Products (as defined
21 below) exposed users in California to DEHP. To the best of the Parties’ knowledge, no
22 public enforcer has prosecuted the allegations set forth in the Notice, and neither CAG nor
23 any other individual or organization has issued any notices of violation under Proposition
24 65 regarding Goal Zero products that are not resolved by this Consent Judgment.

25 1.6 **Complaint**

26 On July 7, 2015, CAG filed a complaint in the Superior Court in and for the County
27 of Los Angeles, entitled *Consumer Advocacy Group, Inc. v. Goal Zero, LLC, et al.*, Case
28 No. BC587267 (the “Action”), alleging violations of California Health & Safety Code §

1 25249.6, based on alleged exposures to DEHP from Covered Products in California as
2 alleged in the Notice (the “Complaint”), and the parties enter into this Consent Judgment as
3 a full and final settlement of all claims that were raised in the Complaint, or which could
4 have been raised in the Complaint, relative to Covered Products. By way of this Consent
5 Judgment, the Parties stipulate that the Complaint- relates only to Covered Products as
6 defined herein.

7 **1.7 No Admission**

8 Goal Zero and the other recipients of the Notice deny all material, factual and legal
9 allegations in the Notice and Complaint, and maintain that all Covered Products sold in
10 California have been and are in compliance with all applicable California laws and
11 regulations. Nothing in this Consent Judgment shall be construed as an admission of any
12 fact, finding, issue of law, or violation of law, nor shall compliance with this Consent
13 Judgment constitute or be construed as an admission by Goal Zero or any other recipient of
14 the Notice of any fact, finding, conclusion, issue of law, or violation of law. However, this
15 section shall not diminish or otherwise affect any party’s obligations, responsibilities, and
16 duties under this Consent Judgment.

17 **1.8 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Goal Zero as to the allegations contained in the Complaint, that venue is
20 proper in the County of Los Angeles, and that this Court has jurisdiction to enter and
21 enforce the provisions of this Consent Judgment.

22 **2. DEFINITIONS**

23 **2.1 Covered Products**

24 For purposes of this Consent Judgment, the term “Covered Products” shall mean
25 lanterns manufactured, imported, distributed and/or sold by Goal Zero, including, but not
26 limited to “GOAL ZERO® USB RECHARGEABLE LANTERN; LIGHTHOUSE 250
27 LANTERN & USB POWER HUB; 48 HOUR RUN TIME; 250 LUMENS; CHARGES
28 PHONES; Barcode: 8 47974 00218 6” as alleged in the Notice.

1 2.2 **Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the
3 date that this Consent Judgment is approved and entered as a judgment of the Court.

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 Beginning on the Effective Date, Goal Zero shall only manufacture for sale in
6 California, purchase for sale in California, or import for sale in California, Covered
7 Products that are “Reformulated Products,” which are defined as Covered Products with a
8 maximum DEHP concentration of 0.1 percent (1,000 parts per million) in any accessible
9 component when analyzed in a reasonable testing program using a testing methodology
10 selected by Goal Zero that is acceptable to federal or state agencies for the purpose of
11 determining the DEHP content in a solid substance, and suitable for the material being
12 tested. “Accessible component” as used in this Consent Judgment means a component of
13 an intact Covered Product that can be touched by a person during intended, typical and
14 reasonably foreseeable use, and it excludes internal components of Covered Products that
15 are not intended to be touched or accessed by consumers.

16 **4. SETTLEMENT PAYMENT**

17 In settlement of all the claims referred to in this Consent Judgment, Goal Zero shall
18 pay a total of **\$57,500.00** within five (5) days of the Effective Date to be allocated among
19 civil penalties, payments in lieu of civil penalties, and reimbursement of CAG’s fees and
20 costs as follows:

21 4.1 **Civil Penalty**

22 Goal Zero shall pay a civil penalty in the amount of seven thousand five hundred
23 dollars (\$7,500.00), to be allocated in accordance with California Health & Safety Code §
24 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
25 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
26 penalty remitted to CAG as follows: Goal Zero shall issue two separate checks to: (a)
27 “OEHHA” in the amount of \$5,625.00; and (b) “Consumer Advocacy Group, Inc.” in the
28 amount of \$1,875.00. All penalty payments shall be delivered to the addresses listed in

1 Section 4.3 below.

2 **4.2 Payment in Lieu of Civil Penalty**

3 Goal Zero also shall separately pay five thousand dollars (\$5,000.00) to CAG as a
4 payment in lieu of civil penalty pursuant to Health & Safety Code §25249.7(b) and
5 California Code of Regulations, Title 11 § 3203(b). CAG will use these funds consistent
6 with California law, and CAG states that it intends to use these funds for investigation of
7 the public’s exposure to Proposition 65 listed chemicals through various means, laboratory
8 fees for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures
9 through various mediums, including but not limited to consumer product, occupational,
10 and environmental exposures to Proposition 65 listed chemicals, and the cost of hiring
11 consulting and retained experts who assist with the extensive scientific analysis necessary
12 for those files in litigation, as well as administrative costs incurred during the litigation, in
13 order to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those
14 persons and/or entities believed to be responsible for such exposures and attempting to
15 persuade those persons and/or entities to reformulate their products or the source of
16 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals,
17 thereby addressing the same potential public harm as allegedly in the instant Action.
18 Further, should the court require it, CAG will submit under seal, an accounting of these
19 funds as described above as to how the funds were used. All payments in lieu of civil
20 penalties shall be delivered to the addresses listed in Section 4.3 below.

21 **4.3 Reimbursement Of Fees And Costs**

22 Goal Zero shall pay forty-five thousand dollars (\$45,000.00) to Yeroushalmi &
23 Yeroushalmi for fees and costs incurred as a result of investigating, bringing this matter to
24 Defendants’ attention, and enforcing this matter, including the fees and costs incurred (and
25 yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
26 Judgment in the public interest. Defendant shall issue a separate 1099 for fees and costs,
27 shall make the check payable to “Yeroushalmi & Associates” and shall deliver payment to
28 the address listed in Section 4.4.1(a) below.

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4.4 Payment Procedures

4.4.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments to CAG pursuant to this Consent Judgment shall be delivered to the following payment address:

Reuben Yeroushalmi
Yeroushalmi & Yeroushalmi
9100 Wilshire Blvd., Suite 240W
Beverly Hills, CA 90212

(b) All payments to OEHHA pursuant to this Consent Judgment shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:
Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:
Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to Yeroushalmi & Yeroushalmi, at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

4.3.2 Issuance of 1099 Forms. After each penalty payment, Goal Zero shall issue separate 1099 forms for each payment to (a) CAG, to be mailed to CAG at 9000 Wilshire Blvd. Los Angeles, CA 90211, and (b) OEHHA, which shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-0284486) in the 1099 form, to be mailed to OEHHA, P.O. Box 4010, Sacramento, CA 95814. CAG and Yeroushalmi shall provide their EINs to Goal Zero upon request, for purposes of issuing 1099 forms.

5. ATTORNEY FEES

5.1 Except as specifically provided in Section 4.3, each Party shall bear its own

1 costs and attorney fees in connection with this action, the Notices, this Consent Judgment
2 and all related matters.

3 **6. RELEASE OF ALL CLAIMS**

4 **6.1 CAG’s Public Release of Proposition 65 Claims**

5 CAG, acting on its own behalf and in the public interest, releases Goal Zero, each
6 entity to whom Goal Zero directly or indirectly distributes or sells Covered Products or
7 whom Goal Zero contracts with to design or produce any aspect of the Covered Products,
8 including, but not limited to, all defendants, all downstream distributors, wholesalers,
9 customers, retailers, marketers, advertisers, shippers, order fulfillers, franchisors and
10 franchisees, cooperative members, licensors and licensees, all of their respective parent,
11 subsidiary and affiliated entities with related ownership or control, and all of their
12 directors, officers, members, shareholders, owners, agents, employees, attorneys,
13 assignees, predecessors in interest and successors in interest (“Releasees”) from all claims
14 for violations of Proposition 65 based on exposure to DEHP from Covered Products as set
15 forth in the Notice, manufactured, imported, acquired for distribution, distributed or sold
16 by Goal Zero prior to the Effective Date. Compliance with the terms of this Consent
17 Judgment constitutes compliance with Proposition 65 with respect to DEHP in Covered
18 Products manufactured, imported, distributed or sold by Goal Zero.

19 **6.2 CAG’s Individual Release of Claims**

20 CAG, in its corporate capacity only and *not* in its representative capacity, provides
21 a release to the Releasees which shall be effective as a full and final accord and satisfaction,
22 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
23 damages, losses, claims, liabilities and demands of plaintiff of any nature, character or
24 kind, whether known or unknown, suspected or unsuspected, limited to and arising out of
25 alleged or actual exposures to DEHP from Covered Products manufactured, distributed or
26 sold by Goal Zero before the Effective Date.

27 **6.3 CAG’s Waiver of Civil Code § 1542**

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1 CAG agrees that the release set forth in this Consent Judgment is a general release
2 that extends to all claims and rights, whether or not presently known or suspected by CAG,
3 which shall apply to the fullest extent permitted by law and equity. CAG expressly waives
4 all rights under any statute, rule, regulation or provision of law or equity that purports to
5 limit CAG's right or ability to waive or release unknown claims or their consequences,
6 including but not limited to section 1542 of the Civil Code of the State of California, which
7 provides as follows:

8 "A general release does not extend to claims which the creditor does not
9 know or suspect to exist in his or her favor at the time of executing the
10 release, which if known by him or her must have materially affected his or
11 her settlement with the debtor."

12 CAG certifies that it has read and understands the provisions of Civil Code section
13 1542 and that the effect and import of these provisions has been explained to CAG by its
14 own counsel. CAG further acknowledges and agrees that this waiver of rights under Civil
15 Code section 1542 has been separately bargained for and is an essential and material term
16 of this Consent Judgment and, without such waiver, the Parties would not have entered into
17 the settlement and this Consent Judgment. CAG further understands and agrees that the
18 facts and circumstances underlying the negotiation of this settlement and Consent
19 Judgment may later prove to be different; CAG assumes all risk of such circumstances, and
20 agrees that this settlement and Consent Judgment shall not be rescinded, set aside,
21 terminated or modified.

22 6.4 Defendant's Release of CAG

23 Goal Zero, on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees, hereby waives any and all claims against CAG, its attorneys
25 and other representatives, for any and all actions taken or statements made by CAG and its
26 attorneys and other representatives, whether in the course of investigating claims or
27 otherwise seeking to enforce Proposition 65 in the Action with respect to Covered
28 Products.

6.5 CAG's Dismissal of Retailers and Licensors

1 Within five days after this Consent Judgment is approved by the Court, CAG shall
2 cause a Request for Dismissal Without Prejudice of the Action to be entered by the Court
3 as to each defendant other than Goal Zero, including but not limited to Sport Chalet, Inc.
4 and all DOE defendants.

5 **7. COURT APPROVAL**

6 7.1 By this Consent Judgment and upon its approval by the Court, the Parties
7 waive their right to trial on the merits, and waive rights to seek appellate review of any and
8 all interim rulings, including all pleading, procedural, and discovery orders.

9 7.2 The Parties acknowledge that, pursuant to California Health & Safety Code
10 §25249.7, a noticed motion is required to obtain judicial approval of this Consent
11 Judgment, which CAG shall file. Defendants shall support the entry of this Consent
12 Judgment. If this Consent Judgment is not approved by the Court, (a) this Consent
13 Judgment and any and all prior agreements between the Parties merged herein shall
14 terminate and become null and void, and the action shall revert to the status that existed
15 prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment
16 or any draft thereof, or of the negotiation, documentation, or other part or aspect of the
17 Parties' settlement discussions, shall have any effect, nor shall any such matter be
18 admissible in evidence for any purpose in this action, or in any other proceeding; and (c)
19 the Parties agree to meet and confer to determine whether to modify the terms of the
20 Consent Judgment and to resubmit it for approval.

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23 **8. ENFORCEMENT OF CONSENT JUDGMENT**

24 8.1 Any Party may, by motion, application for an order to show cause, or any
25 other appropriate action before this Court, enforce the terms and conditions contained in
26 this Consent Judgment. A Party may file such a motion, action or application only after that
27 Party first provides 30 days' notice to the Party allegedly failing to comply with the terms
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1 and conditions of this Consent Judgment and attempts to resolve such Party's failure to
2 comply in an open and good faith manner for a period of no less than 30 days.

3 8.2 Reasonable evidence to support any alleged later violation shall be based at
4 least in part upon testing that meets the requirements of Section 3 of this Consent Judgment
5 by an independent accredited laboratory. This Court shall retain jurisdiction of this matter
6 to implement and enforce the terms of this Consent Judgment.

7 **9. GOVERNING LAW**

8 9.1 The terms of this Consent Judgment shall be governed by the laws of the
9 State of California and apply within the State of California. In the event that Proposition 65
10 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or
11 if any of the provisions of this Consent Judgment are rendered inapplicable or no longer
12 required as a result of any such repeal or preemption or rendered inapplicable by reason of
13 law generally as to the Products, then Defendants shall provide written notice to CAG of
14 any asserted change in the law, and shall have no further obligations pursuant to this
15 Consent Judgment with respect to, and to the extent that, the Covered Products are so
16 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendants from
17 any obligation to comply with any pertinent state or federal toxics control law.

18 9.2 This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter set forth in this
20 Consent Judgment, and any and all prior discussions, negotiations, commitments, or
21 understandings related thereto, if any, are deemed merged. There are no warranties,
22 representations, or other agreements between the Parties except as expressly set forth in
23 this Consent Judgment. No representations, oral or otherwise, express or implied, other
24 than those specifically referred to in this Consent Judgment have been made by any party.
25 No other agreements not specifically contained or referenced in this Consent Judgment,
26 oral or otherwise, shall be deemed to exist or to bind any of the Parties. No
27 supplementation, modification, waiver or termination of this Consent Judgment shall be
28 binding unless executed in writing by the party to be bound. No waiver of any of the

1 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of
2 the other provisions whether or not similar, nor shall such waiver constitute a continuing
3 waiver.

4 9.3 The Parties, including their counsel, have participated in the preparation of
5 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the
6 Parties. This Consent Judgment was subject to revision and modification by the Parties and
7 has been accepted and approved as to its final form by all Parties and their counsel.
8 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
9 interpreted against any Party as a result of the manner of the preparation of this Consent
10 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of
11 construction providing that ambiguities are to be resolved against the drafting Party should
12 not be employed in the interpretation of this Consent Judgment and, in this regard, the
13 Parties hereby waive California Civil Code § 1654.

14 **10. NOTICES**

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

19 To CAG:

20 Consumer Advocacy Group, Inc.
21 c/o Reuben Yeroushalmi
22 Yeroushalmi & Yeroushalmi
23 9100 Wilshire Blvd., Suite 240W
24 Beverly Hills, CA 90212

23 To Goal Zero:

24 Jay Zynczak
25 General Counsel
26 Goal Zero, LLC
27 675 West 14600 South
28 Bluffdale, Utah 84065

With a copy on behalf of Goal Zero to:

Paul S. Rosenlund, Esq.

Duane Morris LLP
One Market Plaza
Spear Tower, Suite 2200
San Francisco, CA 94105-1127

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

11. COUNTERPARTS; FACSIMILE/PDF SIGNATURES

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

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

CAG and its attorneys shall comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

13. MODIFICATION

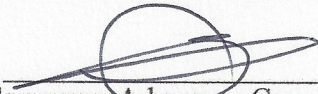
This Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion in accordance with law. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the affected Parties prior to filing a motion to modify the Consent Judgment.

14. 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:

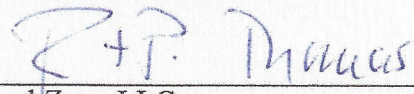
Date: 3-8-16

By: 
Consumer Advocacy Group, Inc.

Print Name: Michael S. Johnson

AGREED TO:

Date: March 7, 2016

By: 
Goal Zero, LLC

Print Name: Robert P. Thomas

Vice President + Secretary

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT