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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, Ph.D., P.E., *et al.*,

16 Plaintiffs,

17 v.

18 COLUMBIA SPORTSWEAR COMPANY,
19 *et al.*,

20 Defendants.

Case No. RG15761080

*Assigned for all Purposes to the Honorable
George C. Hernandez Jr., Superior Court Judge,
Department 17*

**[PROPOSED] CONSENT JUDGMENT
BETWEEN PLAINTIFF ANTHONY E.
HELD, PH.D., P.E. AND DEFENDANTS
JAS. D. EASTON, INC. AND EASTON
TECHNICAL PRODUCTS, INC.**

(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, PH.D.,
4 P.E. (“Held”) and defendants Jas. D. Easton, Inc. and Easton Technical Products, Inc. (collectively,
5 “Easton”), with Held and Easton each referred to individually as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Easton employs ten or more persons and is a person in the course of doing business for
13 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 Held alleges that Easton manufactures, imports, sells and/or distributes for sale in
17 California: (a) tent and shelter fabrics that contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”);
18 and (b) gear wallets with handles and other components containing Lead and/or di(2-
19 ethylhexylphthalate (“DEHP”) without providing the health hazard warning required by Proposition
20 65. TDCPP is listed pursuant to Proposition 65 as a chemical that is known to cause cancer. DEHP
21 and Lead are each listed pursuant to Proposition 65 as chemicals known to cause birth defects or
22 other reproductive harm. TDCPP, DEHP and Lead are referred to collectively herein as the
23 “Listed Chemicals.”

24 **1.5 Product Description**

25 The products covered by this Consent Judgment are: (a) tent and shelter fabrics containing
26 TDCPP including, but not limited to, the *Sundial S 3-Season Shade Shelter #020319*; and (b) gear
27 wallets with vinyl/PVC handles or other components containing Lead and/or DEHP including, but
28 not limited to, the *Easton Gear Wallet #112979* (collectively, the “Products”). The Products

1 subject to this Consent Judgment are: (a) Products directly sold in or into California by Easton; and
2 (b) Products sold or distributed for sale in or into California indirectly by customers of Easton who
3 are physically located in California, or who Easton reasonably believes sell or distribute Products
4 for sale in California.

5 **1.6 Notices of Violation**

6 On June 4, 2014 and October 24, 2014, Held served Easton and the requisite public
7 enforcement agencies with two 60-Day Notices of Violation (the “Notices”), alleging that Easton
8 violated Proposition 65 when it failed to warn its customers and consumers in California of the
9 health hazards associated with exposures to TDCPP in the fabric of its tent and shelter products,
10 and DEHP and Lead in the vinyl handles or other components of its gear wallets. To the best of
11 the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action
12 to enforce the allegations set forth in the Notices.

13 **1.7 Complaint**

14 On March 5, 2015, Held commenced the instant action (“Complaint”), naming Easton as a
15 defendant for the alleged violations of Proposition 65 that are the subject of the Notices.

16 **1.8 No Admission**

17 Easton denies the material, factual, and legal allegations contained in the Notices and
18 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
19 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
20 Judgment shall be construed as an admission by Easton of any fact, finding, conclusion of law,
21 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
22 construed as an admission by Easton of any fact, finding, conclusion of law, issue of law, or
23 violation of law. This Section shall not, however, diminish or otherwise affect Easton’s obligations,
24 responsibilities, and duties under this Consent Judgment.

25 **1.9 Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Easton as to the allegations in the Complaint, that venue is proper in Alameda
28

1 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
2 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

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

6 **2. INJUNCTIVE SETTLEMENT TERMS**

7 Commencing October 1, 2015 and continuing thereafter, Easton shall only manufacture for
8 sale or cause to be manufactured for sale, or purchase for sale or cause to be purchased for sale in
9 California, Reformulated Products. For purposes of this Consent Judgment, “Reformulated
10 Products” are: (a) tent/shelter fabrics that contain no more than 25 parts per million (“ppm”) each,
11 of TDCPP, tris(2-chloroethyl)phosphate (“TCEP”), or tris(2, 3-dibromopropyl)phosphate
12 (“TDBPP”) when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing
13 methodologies 8141, 3545 and 8270C; (b) that contain no more than 90 ppm Lead content by
14 weight in any accessible component of a gear wallet when analyzed pursuant to EPA test
15 methodologies 3050B and 6010B; and (c) have a maximum DEHP content of 1,000 ppm in any
16 accessible component tested pursuant to EPA test methodologies 3050B and 8270C. In addition to
17 the test methodologies set forth above, the Parties may use other appropriate methodologies utilized
18 by any state or federal agency for the purpose of determining TDCPP, TCEP, TDBPP, DEHP
19 and/or Lead content in a solid substance.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

22 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
23 claims referred to in this Consent Judgment, Easton shall pay \$22,500 in civil penalties in
24 accordance with this Section. Each penalty payment will be allocated in accordance with California
25 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
26 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
27 penalty remitted to Held. Held’s counsel shall be responsible for remitting Easton’s penalty
28 payment(s) under this Consent Judgment to OEHHA.

1 **3.1.1 Initial Civil Penalty.** Easton shall make an initial civil penalty payment of
2 \$7,500. Easton shall provide its payment in a single check made payable to “Anthony Held, Client
3 Trust Account” to be delivered to the address provided in Section 3.3, below.

4 **3.1.2 Final Civil Penalty; Waiver for Early Reformulation.** On September 1,
5 2015, Easton shall make a final civil penalty payment of \$15,000. Pursuant to title 11 California
6 Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be
7 waived in its entirety if, no later than August 15, 2015, an officer of Easton provides Held’s counsel
8 with a signed declaration certifying that all of the Products Easton ships for sale or distributes for
9 sale in California as of the date if its declaration are Reformulated Products, and that Easton will
10 continue to offer only Reformulated Products in California in the future. Easton’s certification is
11 limited to the actions taken by Easton in the direct sale and distribution of the Products and is not a
12 certification on behalf of third parties, or with respect to actions that may be taken by third parties
13 with respect to the Products. The option to provide a declaration certifying its complete early
14 reformulation of the Products in lieu of making the final civil penalty payment is a material term,
15 and time is of the essence.

16 **3.2 Reimbursement of Attorneys’ Fees and Costs**

17 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
19 to be resolved after the material terms of the agreement had been settled. After finalizing the other
20 settlement terms the Parties then negotiated a resolution of the compensation due to Held and his
21 counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
23 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs
24 on appeal, if any, Easton shall reimburse Held and his counsel \$34,000. Easton’s payment shall be
25 in the form of a check payable to “The Chanler Group.” The reimbursement covers all fees and
26 costs incurred by Held investigating, bringing this matter to Easton’s attention, litigating, and
27 negotiating a settlement of the matter in the public interest and obtaining court approval of the
28 same.

1 **3.3 Payment Timing / Enforcement of Payment Terms**

2 With the exception of the final civil penalty payment required by Section 3.1.2, Easton
3 shall deliver all payments required by this Consent Judgment to Held’s counsel within five days of
4 the Effective Date. In the event that any payment required by this Consent Judgment, including
5 the Section 3.1.2 final civil penalty, is untimely, the Parties agree and acknowledge that (a) Easton
6 shall be liable to Held for 10% simple interest on any unpaid amount(s); (b) Held may seek to
7 enforce Easton’s payment obligations under general contract principles and Code of Civil
8 Procedure sections 664.6; and (c) Held shall be entitled to any fees incurred recovering such
9 settlement payments pursuant to general contract principles and Code of Civil Procedure section
10 1021.5.

11 **3.4 Payment Address**

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

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held’s Release of Proposition 65 Claims**

19 Held, acting on his own behalf and in the public interest, releases Easton and its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
21 attorneys (“Releasees”) and each entity to whom Easton directly or indirectly distributes or sells the
22 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
23 franchisers, cooperative members, licensors and licensees, including but not limited to REI,
24 (“Downstream Releasees”) for violations arising under Proposition 65 for unwarned exposures to
25 TDCPP, Lead, and/or DEHP from Products manufactured, imported, distributed or sold by Easton
26 prior to the Effective Date, as set forth in the Notices. Compliance with the terms of this Consent
27 Judgment constitutes compliance with Proposition 65 by Easton with respect exposures to TDCPP,
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1 Lead, and/or DEHP from Products manufactured, sold or distributed for sale by Easton after the
2 Effective Date.

3 4 **4.2 Held's Individual Release of Claims**

5 Held, in his individual capacity only and *not* in his representative capacity, also provides a
6 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
7 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
9 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
10 exposures to Lead, DEHP, TDCPP, TCEP, and/or TDBPP in Products manufactured, imported,
11 distributed or sold by Easton before the Effective Date.

12 **4.3 Easton's Release of Held**

13 Easton, on its own behalf and on behalf of its past and current agents, representatives,
14 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
15 attorneys and other representatives, for any and all actions taken or statements made by Held and
16 his attorneys and other representatives in the course of investigating claims, seeking to enforce
17 Proposition 65 against it in this matter, or with respect to the Products.

18 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Easton
9 may provide Held with written notice of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
11 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Easton from its
12 obligation to comply with any pertinent state or federal law or regulation.

13 **8. NOTICE**

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

18 To Easton:

To Held:

19 General Counsel
20 Jas. D. Easton, Inc.
21 5040 West Harold Gatty Drive
22 Salt Lake City, UT 84116

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

22 with a copy to:

23 Elizabeth V. McNulty, Esq.
24 Archer Norris PLC
25 4695 MacArthur Court, Suite 350
26 Newport Beach, CA 92660

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

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COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

COMPLIANCE WITH REPORTING REQUIREMENTS

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

MODIFICATION

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

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:

AGREED TO:

Date: 7/15/15

Date: 7/08/2015

By: *Anthony E. Held*
ANTHONY E. HELD, Ph.D., P.E.

By: *Daren Cottle*
JAS. D. EASTON, INC. and EASTON
TECHNICAL PRODUCTS, INC.

Print Name: Daren Cottle

Its: VP CFO