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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

OLD WORLD INDUSTRIES, LLC and
DOES 1-150, inclusive,

Defendants.

Case No. CIV1500637

[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 Held, Ph.D., P.E.
4 (“Held”) and defendant Old World Industries, LLC (“Old World”), with Held and Old World 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 Old World 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 Old World manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC battery clamp cables containing di(2-ethylhexyl)phthalate (“DEHP”), and
17 that it does so without providing the health hazard warning that Held alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are Peak brand electronic products with
21 vinyl/PVC battery clamp cables that contain DEHP, including, but not limited to, the *Peak*
22 *Performance 400 Watt Tailgate Power Inverter, Model No.: PKC0BO, UPC #0 74804 02564 4*
23 (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On November 25, 2014, Held served Old World and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Old World violated
27 Proposition 65 when it failed to warn its customers and consumers in California that the Products
28

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

3 **1.7 Complaint**

4 On February 20, 2015, Held commenced the instant action, naming Old World as a
5 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 Old World 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 Old World 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 Old World of any fact, finding, conclusion of law, issue of law, or
13 violation of law. This Section shall not, however, diminish or otherwise affect Old World's
14 obligations, 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 Old World as to the allegations contained in the Complaint, that venue is proper in
18 the County of Marin, 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 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

24 **2.1 Reformulation Standards**

25 "Reformulated Products" are defined as those Products containing a maximum of 1,000
26 parts per million ("ppm") of DEHP by weight in any accessible component (i.e., any component
27 that can be touched or handled during reasonably foreseeable use) when analyzed pursuant to
28 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology

1 utilized by federal or state government agencies for the purpose of determining DEHP content in a
2 solid substance.

3 **2.2 Reformulation Commitment**

4 As of the Effective Date all Products manufactured for sale and/or purchased for sale in the
5 State of California by Defendant shall be Products that qualify as Reformulated Products as defined
6 in Section 2.1 above or shall carry the Proposition 65 warnings specified in Section 2.3 below.

7 **2.3 Product Warnings**

8 As of the Effective Date, Old World shall provide clear and reasonable warnings for all
9 Products that do not qualify as Reformulated Products. Each warning shall be prominently placed
10 with such conspicuousness as compared with other words, statements, designs, or devices as to
11 render it likely to be read and understood by an ordinary individual under customary conditions
12 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
13 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
14 confusion. However, the parties acknowledge that Old World presently has a warning program in
15 place with regard to the Products. Therefore, to the extent the warning label requirements set forth
16 below vary from the label language that Old World has been applying, Old World may continue to
17 use its present labeling until it converts to the provisions set forth in this Section 2.3 or December
18 31, 2015, whichever occurs sooner.

19 **(a) Retail Store Sales.**

20 **(i) Product Labeling.** Old World shall affix a warning to the packaging,
21 labeling or directly on each Product provided for sale in retail outlets in California that states:

22 WARNING: The battery clamp component of this product contains DEHP, a
23 phthalate chemical known to the State of California to cause cancer and birth
24 defects and other reproductive harm.

25 **(ii) Owner's Manual.** Alternatively, Old World shall include on the first page
26 of text in an Owner's Manual included in the Product's packaging provided for sale in retail outlets
27 in California a warning that states:
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1 WARNING: The battery clamp component of this product contains DEHP, a
2 phthalate chemical known to the State of California to cause cancer and birth
3 defects and other reproductive harm.

4 **(b) Internet Website Sales.** A warning shall be given in conjunction with the
5 sale of the Products directly by Old World via the internet, which warning shall appear either: (a)
6 on the same web page on which a Product is displayed, (b) on the same web page as the order form
7 for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
8 displayed to a purchaser during the checkout process. The following warning statement shall be
9 used and shall appear in any of the above instances adjacent to or immediately following the
10 display, description, or price of the Product for which it is given in the same type size or larger than
11 the Product description text:

12 WARNING: The battery clamp component of this product contains DEHP, a
13 phthalate chemical known to the State of California to cause cancer and birth
14 defects and other reproductive harm.

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16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

18 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
19 claims referred to in this Consent Judgment, Old World shall pay \$12,000.00 in civil penalties in
20 accordance with this Section. Each penalty payment will be allocated in accordance with California
21 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
22 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
23 penalty remitted to Held. Held’s counsel shall be responsible for remitting Old World’s penalty
24 payment(s) under this Consent Judgment to OEHHA.

25 **3.1.1 Initial Civil Penalty.** Old World shall make an initial civil penalty payment
26 of \$3,000.00. Old World shall provide its payment in a single check made payable to “Anthony
27
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1 Held, Ph.D., P.E., Client Trust Account” to be delivered to the address provided in Section 3.4,
2 below.

3 **3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On

4 November 15, 2015, Old World shall make a final civil penalty payment of \$9,000.00. Pursuant to
5 title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty
6 payment shall be waived in its entirety if, no later than October 31, 2015, an officer of Old World
7 provides Held with a signed declaration certifying that the Products it ships for sale or distributes
8 for sale in California as of the date if its declaration are Reformulated Products, and that Old World
9 will offer only Reformulated Products in California in the future. The option to certify early
10 reformulation in lieu of making the final civil penalty payment otherwise required by this Section is
11 a material term, and time is of the essence.

12 **3.2 Reimbursement of Attorneys’ Fees and Costs**

13 The Parties acknowledge that Held and his counsel, the Chanler Group, offered to resolve
14 this dispute without reaching terms on the amount of fees and costs to be reimbursed to them,
15 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.
16 Shortly after the other settlement terms had been finalized, the Parties negotiated a resolution of
17 the compensation due to Held and his counsel under general contract principles and the private
18 attorney general doctrine codified at California Code of Civil Procedure § 1021.5 as separate and
19 final settlement term. For all work performed through the mutual execution of this agreement and
20 the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, Old World shall
21 reimburse Held and his counsel \$28,500 for all fees and costs incurred by Held investigating,
22 bringing this matter to Old World’s attention, litigating, and negotiating a settlement of the matter
23 in the public interest.

24 **3.3 Payment Timing; Payments Held In Trust**

25 With the exception of the final civil penalty payment required by Section 3.1.2, Old World
26 shall deliver all payments required by this Consent Judgment to its counsel within ten days of the
27 date of the filing of the motion to approve this Consent Judgment under Section 5.0 below. Old
28 World’s counsel shall confirm receipt of settlement funds in writing to Held’s counsel and,

1 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for
2 approval of the Parties' settlement contemplated by Section 5. Within two business days of the
3 Effective Date, Old World's counsel shall deliver all settlement payments it has held in trust to
4 Held's counsel at the address provided in Section 3.4. In the event the final civil penalty payment
5 required by Section 3.1.2 becomes due prior to the Effective Date, then Old World shall deliver the
6 final civil penalty payment to its attorney to be held in trust until, and disbursed within two
7 business days after, the Effective Date.

8 **3.4 Payment Address**

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

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Held's Release of Proposition 65 Claims**

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

4.2 Held's Individual Release of Claims

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

8 **4.3 Old World's Release of Held**

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

15 **5. COURT APPROVAL**

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

26 **6. SEVERABILITY**

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

4 **7. GOVERNING LAW**

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

12 **8. NOTICE**

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

17 To Old World Industries, LLC:

18 Daniel N. Leep
19 General Counsel and Secretary
20 Old World Industries, LLC
21 4065 Commercial Avenue
22 Northbrook, IL 60062

23 with a copy to Old World’s counsel:

24 James A. Geocaris, Esq.
25 Lewis Brisbois Bisgaard & Smith, LLP
26 650 Town Center Drive, Suite 1400
27 Costa Mesa, California 92626

To Held:

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

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

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

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

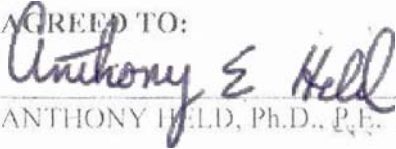
8 Held and his counsel agree to comply with the reporting form requirements referenced in
9 California Health and Safety Code section 25249.7(f).

10 **11. MODIFICATION**

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

14 **12. AUTHORIZATION**

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

18
19 **AGREED TO:**
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21 ANTHONY HELD, Ph.D., P.E.

22 Dated: 9/3/15

AGREED TO:

OLD WORLD INDUSTRIES, LLC

By: DANIEL M. LEEP
(Print Name)

Its: SECRETARY
(Title)

Dated: SEPTEMBER 2, 2015

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