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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 HARROW SPORTS, INC.,

19 Defendant.
20

Case No. RG15777974

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”)
4 and Harrow Sports, Inc. (“Harrow Sports”), with Held and Harrow Sports each individually referred
5 to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Harrow Sports employs ten or more persons and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Harrow Sports manufactures, imports, sells, or distributes for sale in
16 California, ball bags with vinyl/PVC components containing di(2-ethylhexyl) phthalate (“DEHP”),
17 without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects, and other
19 reproductive harms.

20 **1.5 Product Description**

21 Harrow Sports’ products that are covered by this Consent Judgment are (i) ball bags with
22 vinyl/PVC components containing DEHP including, without limitation, the *Elite Ball Bag, UPC #8*
23 *40749 00186 5* (“Ball Bags”), and (ii) field hockey gloves with vinyl/PVC components, including,
24 but not limited to the *Harrow Field Hockey Glove, #2500030213, UPC #8 49776 00351 4* (“Hockey
25 Gloves”), which are manufactured by or for Harrow Sports and sold in the State of California (the
26 “Covered Products”).
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1 **1.6 Notices of Violation**

2 On April 29, 2015, Held served Harrow Sports, others, and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Harrow Sports
4 violated Proposition 65 when it failed to warn its customers and consumers in California that ball
5 bags with vinyl/PVC components expose users to DEHP. On September 24, 2015, Held served
6 Harrow Sports, and certain requisite public enforcement agencies with a “Supplemental 60-Day
7 Notice of Violation” (“Supplemental Notice”) alleging that Harrow Sports violated Proposition 65
8 when it failed to warn its customers and consumers in California that field hockey gloves with
9 vinyl/PVC components expose users to DEHP. The Notice and the Supplemental Notice shall
10 hereinafter be referred to as the “Notices.”

11 **1.7 Complaint**

12 On or about July 15, 2015, Held filed the instant action (“Complaint”), naming Harrow Sports
13 as defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject
14 of the Notice. Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc*
15 *pro tunc* to include the violations of Proposition 65 alleged by Held in the Supplemental Notice.

16 **1.8 No Admission**

17 Harrow Sports denies the material, factual, and legal allegations contained in the Notices and
18 Complaint, and maintain that all of the products that they have sold and distributed for sale in
19 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
20 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
21 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
22 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
23 Section shall not, however, diminish or otherwise affect Harrow Sports’ obligations, responsibilities,
24 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 Harrow Sports as to the allegations in the Complaint, that venue is proper in the
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1 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date which the
5 Court approves this Consent Judgment, including any unopposed tentative rulings.

6 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

7 **2.1 Reformulation of Products**

8 Within forty five (45) days of the Effective Date, and continuing thereafter, Harrow Sports
9 shall only purchase for sale, manufacture for sale, import, sell, or distribute for sale in California
10 Covered Products that are either: (i) “Reformulated Products” (as defined below in this section), or
11 (ii) contain a clear and reasonable warning required under Section § 25603.2 of the California Health
12 & Safety Code, as set forth in Section 2.2 below (“Product Warning”). For purposes of this Consent
13 Judgment, “Reformulated Products” are products that contain DEHP in concentrations of less than
14 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection
15 Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or
16 state agencies for the purpose of determining the DEHP content in a solid substance.

17 **2.2 Product Warnings**

18 Each Product Warning shall be prominently placed with such conspicuousness as compared
19 with other words, statements, designs, or devices as to render it likely to be read and understood by
20 an ordinary individual under customary conditions before purchase or use. Each warning shall be
21 provided in a manner such that the consumer or user understands to which *specific* Product the
22 warning applies, so as to minimize the risk of consumer confusion.

23 **(a) Retail Store Sales and Product Labeling.**

24 Harrow Sports shall cause a warning to be affixed to the packaging, or labeling on each
25 Product provided for sale in retail outlets in California that states:

26 **WARNING:** This product contains a chemical known to the State of California to
27 cause birth defects or other reproductive harms.
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1 **(b) Mail Order Catalog and Internet Sales.**

2 In the event that Harrow Sports sells Covered Products via mail order catalog and/or the
3 internet, to customers located in California Harrow Sports shall provide Product Warnings for such
4 Covered Products. Product Warnings given in the mail order catalog or on the internet shall identify
5 the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

6 **(i) Mail Order Catalog Warning.** Any Product Warning provided in a
7 mail order catalog shall be in the same type size or larger than the Product description text within the
8 catalog. The following Product Warning shall be provided on the same page and in the same location
9 as the display and/or description of the Product:

10 **WARNING:** This product contains a chemical known to the State of California to
11 cause birth defects or other reproductive harms.

12 Where it is impracticable to provide the warning on the same page and in the same location as the
13 display and/or description of the Covered Product, Harrow Sports may utilize a designated symbol to
14 cross reference the applicable warning and shall define the term “designated symbol” with the
15 following language on the inside of the front cover of the catalog or on the same page as any order
16 form for the Covered Product(s):

17 **WARNING:** Certain products identified with this symbol ▼
18 and offered for sale in this catalog contains
19 a chemical known to the State of California to
20 cause birth defects or other reproductive harms.

21 The designated symbol must appear on the same page and in close proximity to the display
22 and/or description of the Covered Product. On each page where the designated symbol appears,
23 Harrow Sports must provide a header or footer directing the consumer to the warning language and
24 definition of the designated symbol.

25 **(ii) Internet Website Warning.** A Product Warning shall be given in
26 conjunction with the sale of the Covered Products via the internet to the California consumers, which
27 warning shall appear either: (a) on the same web page on which a Covered Product is displayed; (b)
28 on the same web page as the order form for a Covered Product; (c) on the same page as the price for

1 any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout
2 process. The following warning statement shall be used and shall appear in any of the above
3 instances adjacent to or immediately following the display, description, or price of the Covered
4 Product for which it is given in the same type size or larger than the Product description text:

5 **WARNING:** This product contains a chemical known to the State of California to
6 cause birth defects or other reproductive harms.

7 Alternatively, the designated symbol may appear adjacent to or immediately following the
8 display, description, or price of the Covered Product for which a warning is being given, provided
9 that the following warning statement also appears elsewhere on the same web page, as follows:

10 **WARNING:** This product contains a chemical known to the State of California to
11 cause birth defects or other reproductive harms.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Civil Penalty Payments**

14 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
15 to in this Consent Judgment, Harrow Sports shall pay \$7,500 in civil penalties. Each civil penalty
16 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
17 seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health
18 Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the penalty allocated to Held.

19 **3.1.1 Initial Civil Penalty**

20 Within five (5) days following the Effective Date, Harrow Sports shall make the initial
21 civil penalty payment in the amount of \$2,500 to by check made out to “Anthony E. Held, Ph.D.,
22 P.E., Client Trust Account.” Held subsequently will direct 75% of the initial civil penalty to
23 OEHHA.

24 **3.1.2 Final Civil Penalty**

25 On or before June 30, 2016, Harrow Sports shall make a final civil penalty payment of
26 \$5,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the
27 final civil penalty payment shall be waived in its entirety if, no later than June 15, 2016, an officer of
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1 Harrow Sports provides Held with written certification that it is no longer offering or distributing for
2 sale in California the Covered Products, or that it is only offering for sale in California Covered
3 Products that qualify as Reformulated Products, as defined in section 2 of this Consent Judgment.
4 The option to provide the above-described certification in lieu of making the final civil penalty
5 payment required by this Section is a material term and time is of the essence.

6 **3.2 Reimbursement of Fees and Costs**

7 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
9 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
10 other settlement terms had been finalized, Harrow Sports expressed a desire to resolve Held's fees
11 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held
12 and his counsel under general contract principles and the private attorney general doctrine codified at
13 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
14 execution of this Consent Judgment. Harrow Sports shall, within five (5) days of the Effective Date,
15 issue a check for \$24,000 to the address found in Section 3.3.1 below. This payment shall be made
16 by a check payable to "The Chanler Group."

17 **3.3 Payment Procedures**

18 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
19 this Consent Judgment are to be delivered within fifteen (15) days following the full execution of
20 this Consent Judgment to Valle Makoff, LLP, to be held in its client trust account, and released to
21 The Chanler Group and Held within five (5) days of the Effective Date, as provided in subsections
22 3.1 and 3.2, and mailed to the addresses set forth in subsection 3.3.1.

23 **3.3.1 Payment Address**

24 All payments and tax documentation for OEHHA, Held, and his counsel shall be
25 delivered to:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **3.3.2 Issuance of Tax Documentation**

2 Within 15 days of the execution of this Consent Judgment, The Chanler Group shall
3 advise Harrow Sports, through its counsel, regarding the issuance of 1099 forms, including the
4 persons and entities to whom 1099 forms should be issued, and the tax identification numbers for
5 each such person and entity.

6 **3.3.3 Court Approval; Reimbursement.**

7 If the Court does not approve the Consent Judgment within one year from the date of
8 execution by Harrow Sports, all funds tendered into any trust account, or otherwise received by The
9 Chanler Group from Harrow Sports in settlement of this action, shall be refunded in full.

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Held’s Public Release of Proposition 65 Claims**

12 Held, acting on his own behalf and in the public interest, hereby releases Harrow Sports and
13 its parents, subsidiaries, affiliated entities under common ownership (including Caleel + Hayden
14 LLC), directors, officers, employees, and attorneys (collectively “Releasees”) and each entity to
15 whom it directly or indirectly distributes or sells the Products, including but not limited to its
16 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
17 licensors, and licensees (“Downstream Releasees”) from all claims for violations arising under
18 Proposition 65 for unwarned exposures to DEHP from the Covered Products sold by Harrow Sports
19 prior to the Effective Date, as set forth in the Notices. Upon entry of this Consent Judgment by the
20 Court, going forward, Harrow Sports’ compliance with the terms of Section 2 of this Consent
21 Judgment shall be deemed to constitute compliance with Proposition 65 with respect to DEHP in
22 the Covered Products, pending full implementation of Harrow Sports’ obligations set forth in
23 Section 2 of this Consent Judgment.

24 **4.2 Held’s Individual Release of Claims**

25 Held, in his individual capacity only and *not* in his representative capacity, on behalf of
26 himself and his past and current agents, representatives, attorneys, successors, and/or assignees, also
27 provides a release to Releasees, and Downstream Releasees, which shall be effective as a full and
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1 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
3 kind, arising out of alleged or actual exposures to DEHP from the Covered Products sold or
4 distributed for sale by Harrow Sports before the Effective Date. Upon entry of this Consent
5 Judgment by the Court, going forward, Harrow Sports' compliance with the terms of Section 2 of
6 this Consent Judgment shall be deemed to constitute compliance with Proposition 65 with respect to
7 the Listed Chemicals in the Products, pending full implementation of Harrow Sports' obligations set
8 forth in Section 2 of this Consent Judgment.

9 **4.3 Harrow Sports' Release of Held**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
18 has been fully executed by the Parties, at which time, per section 3.3.3, any funds being held in trust
19 for purposes of this agreement shall be fully reimbursed to Harrow Sports.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
27 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Harrow Sports
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1 may provide written notice to Held 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 are
3 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Harrow Sports from any
4 obligation to comply with any applicable state or federal toxics control laws.

5 **8. NOTICE**

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

9 For Harrow Sports:

10 Jennifer Laser, Esq.
11 Valle Makoff, LLP
12 11911 San Vicente Blvd., Suite 324
Los Angeles, California 90049

13 For Held:

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

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Held agrees to comply with the reporting form requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, Held and Harrow Sports agree to mutually employ their best
28 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain

1 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
2 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
3 and supporting the motion for judicial approval.

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
7 Party, and the entry of a modified consent judgment by the Court.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein.

11 **13. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement and understanding of the parties. No
13 representations, oral or otherwise, express or implied, other than those contained herein, have been
14 made by any party hereto. No other agreements shall be deemed to exist or to bind any of the parties.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 12/16/2015

Date: 12/16/15

18
19 By: Anthony E. Held

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

By: Mark Hayden

21 Mark Hayden, President
22 HARROW SPORTS, INC.
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