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13 ASSOCIATED LEISURE PRODUCTS, INC.

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO
17 UNLIMITED CIVIL JURISDICTION

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

19 Plaintiff,

20 v.

21 ASSOCIATED LEISURE PRODUCTS, INC.,

22 Defendant.
23
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Case No. CGC-18-567464

[PROPOSED]
CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*,
& Cal. Code Civ. Proc. § 664.6)

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 Associated Leisure Products, Inc. (“Associated Leisure”), with Held and Associated Leisure each
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Associated Leisure manufactures, imports, distributes, sells and/or offers for
16 sale in California, vinyl/PVC hoses containing di(2-ethylhexyl)phthalate (“DEHP”) and floating pool
17 thermometers containing DEHP. DEHP is listed pursuant to Proposition 65 as a chemical known to
18 cause birth defects or other reproductive harm. Held alleges that Associated Leisure failed to provide
19 the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from
20 vinyl/PVC hoses and floating pool thermometers.

21 **1.5 Products Description**

22 The “Products” manufactured, produced, packaged, created, or otherwise made by Associated
23 Leisure and sold under Associated Leisure’s brand name, Aqua EZ, that are covered by this Consent
24 Judgment are defined as vinyl/PVC hoses containing DEH, including, but not limited to, the *Aqua EZ*
25 *Pool Accessories Professional Backwash Hose, Item# 176919, Model# BWH50PRO, UPC #0 26497*
26 *00687 5*, and floating pool thermometers containing DEHP including, but not limited to, *the Aqua EZ*
27 *Floating Animal Thermometer, Item # 37955, Model # TF225-S, UPC #0 26497 02251 6*.

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1 **1.6 Notices of Violation**

2 On or about December 13, 2017, Held served Associated Leisure, and certain requisite public
3 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Associated Leisure
4 violated Proposition 65 by failing to warn its customers and consumers in California that its
5 vinyl/PVC hoses expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer
6 has commenced and is diligently prosecuting the allegations set forth in the Notice.

7 On or about May 31, 2018, Held served Associated Leisure, and certain requisite public
8 enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”),
9 alleging that Associated Leisure violated Proposition 65 by failing to warn its customers and
10 consumers in California that its Products expose users to DEHP.

11 The Notice and Supplemental Notice are collectively referred to herein as the “Notices.”

12 **1.7 Complaint**

13 On June 20, 2018, no public enforcer having commenced prosecuting the allegations set forth
14 in the Notice, Held filed the instant action (“Complaint”), for the violations of Proposition 65 that are
15 the subject of the Notice. As of the Effective Date, the Complaint shall be deemed amended to
16 incorporate Held’s allegations in the Supplemental Notice, the definition of the term Products in the
17 Complaint shall be deemed amended to include all Products as defined in this Consent Judgment as
18 set forth in the Notices, so long as no public enforcer has commenced prosecuting the allegations set
19 forth in the Supplemental Notice.

20 **1.8 No Admission**

21 Associated Leisure denies the material, factual, and legal allegations contained in the Notices
22 and the Complaint and maintains that all of the products that it has sold and distributed in California,
23 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
24 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be
25 construed as, an admission by Associated Leisure of any fact, finding, conclusion, issue of law, or
26 violation of law, such being specifically denied by Associated Leisure. However, this Section shall
27 not diminish or otherwise affect Associated Leisure’s obligations, responsibilities, and duties under
28 this Consent Judgment.

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Associated Leisure as to the allegations in the Complaint, that venue is proper in the
4 City and County of San Francisco, and that the Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
8 the Court grants the motion for approval of the Consent Judgment contemplated by Section 10.

9 **2. INJUNCTIVE RELIEF: REFORMULATION**

10 **2.1 Reformulation Commitment**

11 Commencing on the Effective Date and continuing thereafter, Associated Leisure shall only
12 manufacture, distribute, sell or offer for sale in or into California, “Reformulated Products”. For
13 purposes of this Settlement Agreement, “Reformulated Products” are Products containing DEHP,
14 butyl benzyl phthalate (“BBP”), di-n-butyl (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl
15 phthalate (“DINP”), and di-n-hexyl phthalate (“DnHP”) each in concentrations of less than 0.1
16 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California,
17 a federal agency, or a nationally recognized accrediting organization. For purposes of compliance
18 with this reformulation standard, testing samples shall be prepared and extracted using Consumer
19 Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S.
20 Environmental Protection Agency (“EPA”) methodology 8270C, or other methodologies utilized by
21 federal or state government agencies to determine phthalate content in a solid substance.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty**

24 Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all claims alleged in
25 the Notices, Associated Leisure agrees to pay a total of \$14,365 in civil penalties. The penalty
26 payment will be allocated in accordance with Health and Safety Code §25249.12(c)(1) & (d), with
27 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
28 Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Held. Within 5

1 days of the Effective Date, Associated Leisure shall provide its payment as follows: (i) a check in the
2 amount of \$10,773.75 payable to “OEHHA” and (ii) a check in the amount of \$3,591.25 payable to
3 “Anthony Held Client Trust Account.” Held’s counsel shall be responsible for delivering OEHHA’s
4 portion of the penalty payments made under this Consent Judgment.

5 **3.2 Attorneys’ Fees and Costs**

6 The Parties reached an accord on the compensation due to Held and his counsel under
7 general contract principles and the private attorney general doctrine codified at Code of Civil
8 Procedure §1021.5 for all work performed in this matter. Under these legal principles, within 5
9 days of the Effective Date, Associated Leisure agrees to pay \$35,000 to Held and his counsel for
10 all fees and costs incurred investigating, bringing this matter to the attention of Associated
11 Leisure’s management, and negotiating that provides a significant public benefit. Associated
12 Leisure’s payment shall be in the form of a check payable to “The Chanler Group.”

13 **3.3 Payment Address**

14 All payments under this Consent Judgment shall be delivered to:

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

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Held’s Individual Release of Associated Leisure**

22 This Consent Judgment is a full, final and binding resolution between Held, acting on his own
23 behalf and in the public interest, and Associated Leisure, of any violation of Proposition 65 that was
24 or could have been asserted by Held on behalf of himself, his past and current agents, principals,
25 employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys,
26 predecessors, successors, and/or assignees and heirs, against Associated Leisure, its parents,
27 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
28 and each entity to whom Associated Leisure directly or indirectly distributes or sells the Products,
including, but not limited, to Lowe’s Home Centers, LLC, their parent, and all subsidiaries and
affiliates thereof (hereinafter “Lowe’s”), their respective employees, agents, and assigns, as well as

1 Associated Leisure’s other downstream distributors, wholesalers, customers, retailers, franchisees,
2 cooperative members, and licensees, and their owners, directors, officers, agents, principals,
3 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Releasees”), for
4 any and all claims based on the failure to warn about alleged exposures to DEHP contained in the
5 Products sold by Associated Leisure before the Effective Date as alleged in the Notices.

6 In further consideration of the promises and agreements herein contained, Held, on behalf of
7 himself, his past and current agents, principals, employees, insurers, accountants, entities under his
8 ownership or direction, representatives, attorneys, successors, and/or assignees, hereby waives any
9 and all rights that he may have to institute or participate in, directly or indirectly, any form of legal
10 action and releases all claims that Held may have, including, without limitation, all actions, and
11 causes of action, in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines,
12 penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and
13 attorneys’ fees arising under Proposition 65 with respect to DEHP, BBP, DBP, DIDP, DINP, and
14 DnHP in the Products sold by Associated Leisure before the Effective Date (collectively “claims”),
15 against Associated Leisure and Releasees.

16 **4.2 Associated Leisure’s Release of Held**

17 Associated Leisure, on its own behalf, and on behalf of its past and current agents,
18 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against
19 Held and his attorneys and other representatives, for any and all actions taken or statements made by
20 Held and his attorneys and other representatives, whether in the course of investigating claims
21 articulated in the Notices, otherwise seeking to enforce Proposition 65 against it in this matter, or
22 regarding the Products.

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and shall
25 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
26 has been fully executed by the Parties, or by such additional time as the Parties may agree to in
27 writing.

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1 **6. SEVERABILITY**

2 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
3 of the provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of
4 the 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 or is otherwise
8 rendered inapplicable by reason of law generally, or as to DEHP, BBP, DBP, DIDP, DINP, DnHP or
9 as to the Products, then Associated Leisure may provide written notice to Held of any asserted change
10 in the law, or its applicability to Associated Leisure or the Products, and shall have no further
11 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that,
12 Associated Leisure or the Products are so affected.

13 **8. NOTICE**

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

18 **Associated Leisure:** Theodore Pointer, CEO
19 Associated Leisure Products, Inc.
20 6510 Jimmy Carter Boulevard, Suite D
Norcross, GA 30071

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

21 on behalf of **Associated Leisure:**

22 Rebecca L. Woodson, Esq.
23 DENTONS US LLP
24 One Market Plaza
Spear Tower, 24th Floor
San Francisco, CA 94105

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

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1 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Held and his attorneys agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to
8 Health and Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the
9 settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best
10 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
11 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
12 shall include, at a minimum, supporting the motion.

13 **11. MODIFICATION**

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

17 **12. AUTHORIZATION**

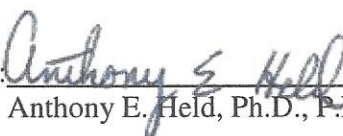
18 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
19 Parties and have read, understood, and agreed to all of the terms and conditions of this Consent
20 Judgment.


21 **AGREED TO:**

AGREED TO:

22
23 Date: 8/31/2018

Date: Sept 17-2018

24 By: 
25 Anthony E. Held, Ph.D., P.E.

By: 
Theodore Pointer, Chief Executive Officer
Associated Leisure Products, Inc.