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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 E & E, CO., LTD.; *et al.*,

18 Defendants.
19
20

Case No.: CGC-13-535569

[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”) and E & E, Co., Ltd. (“E & E”), with Held and E & E each individually referred 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 toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that E & E manufactures, imports, sells, or distributes for sale in California, pillows with vinyl/PVC components that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC pillows containing DEHP that are manufactured, imported, sold, or distributed for sale in California by E & E including, but not limited to, *Threshold Pillows, F16668983, V1138719, #065 15 1882 ID142444, UPC #4 90651 51882 3* (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On or about August 30, 2013, Held served E & E and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that E & E was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP.

1 **1.7 Complaint**

2 On November 19, 2013, Held filed the instant action (“Complaint”), naming E & E as a
3 defendant for the violations of Health and Safety Code section 25249.6 that are the subject of the
4 Notice.

5 **1.8 No Admission**

6 E & E denies the material, factual, and legal allegations contained in the Notice and
7 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
8 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
9 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
10 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
11 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
12 Section shall not, however, diminish or otherwise affect E & E’s obligations, responsibilities, and
13 duties under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over E & E as to the allegations in the Complaint, that venue is proper in the County of
17 San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
18 Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means May 15, 2014.

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

22 **2.1 Reformulated Products**

23 Commencing on the Effective Date, and continuing thereafter, E & E shall only purchase for
24 sale, manufacture for sale, or distribute for sale in California “Reformulated Products.” For purposes
25 of this Consent Judgment, Reformulated Products are products that contain a maximum of 1,000
26 parts per million DEHP by weight in any accessible component (i.e., any part or feature of a Product
27 that may be touched during use) when analyzed pursuant to EPA testing methodologies 3580A and
28

1 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP
2 content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
6 this Consent Judgment, E & E shall pay \$13,500 in civil penalties. Each civil penalty payment shall
7 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
8 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held.

10 **3.1.1 Initial Civil Penalty**

11 On or before the Effective Date, 2014, E & E shall make an initial civil penalty
12 payment of \$4,500. E & E shall provide its payment in two checks for the following amounts made
13 payable to: (a) “OEHHA” in the amount of \$3,375.00; and (b) “Anthony E. Held, Ph.D., P.E., Client
14 Trust Account” in the amount of \$1,125.

15 **3.1.2 Final Civil Penalty**

16 On August 15, 2014, E & E shall make a final civil penalty payment of \$9,000.
17 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
18 penalty payment shall be waived in its entirety if, no later than August 1, 2014, an officer of E & E
19 provides Held with written certification that all of the Products it has sold or distributed for sale in
20 California as of the date of such certification are Reformulated Products as defined by Section 2.1,
21 and that E & E will continue to offer only Reformulated Products in California in the future. The
22 option to certify reformulation in lieu of making the final civil penalty payment required by this
23 Section is a material term, and with regard to such term, time is of the essence.

24 **3.2 Reimbursement of Fees and Costs**

25 The parties acknowledge that Held and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, E & E expressed a desire to resolve Held’s fees and costs.

1 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
2 counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
4 execution of this Consent Judgment. On or before the Effective Date, E & E shall pay \$37,500 for
5 the fees and costs incurred by Held investigating, bringing this matter to E & E's attention, and
6 negotiating a settlement in the public interest.

7 **3.3 Payment Procedures**

8 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
9 this Consent Judgment are to be held in trust by E & E's counsel until such time as the Court
10 approves the Consent Judgment. Within five days of an order from the Court approving the Consent
11 Judgment, all payments shall be delivered to OEHHA, Held, and Held's counsel at the addresses
12 provided below.

13 **3.3.1 Payment Addresses**

14 (a) All payments and tax documentation for Held and his counsel shall be
15 delivered to:

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

21 (b) All payments and tax documentation for OEHHA shall be delivered directly
22 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
23 appropriate:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

1 **3.3.2 Proof of Payment to OEHHA**

2 E & E shall provide Held’s counsel with a copy of the checks sent to OEHHA
3 enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Englander’s Public Release of Proposition 65 Claims**

6 Held, acting on his own behalf and in the public interest, releases E & E and its parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
8 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
9 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers
10 (including, but not exclusively, Target Corporation), franchisers, cooperative members, licensors
11 and licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for
12 unwarned exposures to DEHP from the Products sold by E & E prior to the Effective Date, as set
13 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
14 with Proposition 65 with respect to exposures to DEHP from the Products sold by E & E before the
15 Effective Date, as set forth in the Notice.

16 **4.2 Held’s Individual Release of Claims**

17 Held, in his individual capacity only and *not* in his representative capacity, also provides a
18 release to E & E, Releasees, and Downstream Releasees which shall be effective as a full and final
19 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
20 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
21 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
22 exposures to DEHP in the Products sold or distributed for sale by E & E before the Effective Date.

23 **4.3 E & E’s Release of Held**

24 E & E, on its own behalf, and on behalf of its past and current agents, representatives,
25 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
26 attorneys and other representatives, for any and all actions taken or statements made by Held and
27 his attorneys and other representatives, whether in the course of investigating claims, otherwise
28 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the Parties.

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California
11 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
12 otherwise rendered inapplicable by reason of law generally, or as to the Products, then E & E may
13 provide written notice to Englander of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
15 so affected. Nothing in this Consent Judgment shall be interpreted to relieve E & E from any
16 obligation to comply with any pertinent state or federal toxics control laws.

17 **8. NOTICE**

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

21 For E & E:

22 Edmund Jin, Chief Executive Officer
23 E & E Co., Ltd.
24 45875 Northport Loop East
25 Fremont, CA 94536

26 with a copy to:

27 Barbara Adams, Esq.
28 Adams | Nye | Becht LLP
 222 Kearny St., 7th Floor
 San Francisco, CA 94108

1 For Held:

2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Held agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, Held and E & E agree to mutually employ their best efforts,
18 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
19 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
20 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and
21 supporting the motion for judicial approval.

22 **12. MODIFICATION**

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

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13. AUTHORIZATION

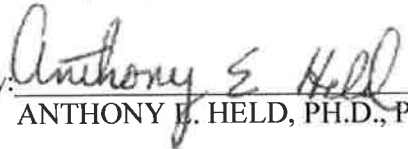
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: May 23, 2014

Date: _____

By: 
ANTHONY J. HELD, PH.D., P.E.

By: _____
Edmund Jin, Chief Executive Officer
E & E CO., LTD.

13.1 **AUTHORIZATION**

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


4 **AGREED TO:**

AGREED TO:

5
Date: _____

Date: 5/6/2014

7
By: _____
ANTHONY E. HELD, PH.D., P.E.

By: 
Edmund Jin, Chief Executive Officer
E & E CO., LTD.

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