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Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

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

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
GSI OUTDOORS, INC.; *et al.*,
Defendants.

Case No. CGC-14-536716
[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 GSI Outdoors, Inc. (“GSI”), with Held and GSI each individually referred to as a “Party” and
5 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 GSI 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that GSI manufactures, imports, sells, or distributes for sale in California,
16 camping cookware with vinyl and/or PVC coated handles containing di(2-ethylhexyl)phthalate
17 (“DEHP”) and flasks with leather wrapping containing lead without first providing the exposure
18 warning required by Proposition 65. DEHP and lead are listed pursuant to Proposition 65 as
19 chemicals known to the State of California to cause birth defects or other reproductive harm. Lead
20 and DEHP are referred to collectively hereinafter as the “Listed Chemicals.”

21 **1.5 Product Description**

22 The GSI products that are covered by this Consent Judgment are (a) camping cookware with
23 vinyl and/or PVC coated handles that are manufactured, imported, sold, or distributed for sale in
24 California by GSI including, but not limited to, *the Bugaboo Frypan, the Pinnacle Soloist, Pinnacle*
25 *Dualist, Campware Nonstick Frypan and Pinnacle Frypan* and (b) flasks with leather wrapping that
26 are manufactured, imported, sold, or distributed for sale in California by GSI, including but not
27 limited to, *the Glacier Stainless Leather Wrapped Flask*, (collectively “Products”).
28

1 **1.6 Notice of Violation**

2 On or about July 24, 2013, Held served GSI and certain requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”) alleging that GSI was in violation of Proposition 65 for
4 failing to warn its customers and consumers in California that the Products expose users to the Listed
5 Chemicals.

6 **1.7 Complaint**

7 On January 10, 2014, Held filed the instant action (“Complaint”), naming GSI as a defendant
8 for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the
9 Notice.

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over GSI as to the allegations in the Complaint, that venue is proper in the County of San
22 Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
23 Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means March 1, 2014.

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

27 **2.1 Reformulated Products**

28 Commencing on the Effective Date, and continuing thereafter, GSI shall only purchase for
sale, manufacture for sale, or distribute for sale in California “Reformulated Products,” or Products

1 that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For purposes of this
2 Consent Judgment, Reformulated Products are products that:

3 (a) contain DEHP in concentrations of no more than 0.1 percent (1,000 parts per million)
4 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
5 8270C or any other methodology utilized by federal or state agencies for the purpose of determining
6 the DEHP content in a solid substance;

7 (b) contain a maximum of 100 parts per million lead by weight in any accessible component
8 (i.e., any component that may be touched during use) analyzed pursuant to EPA testing
9 methodologies 3050B and 6010B; and

10 (c) yield a result of no more than 1.0 micrograms lead when sampled according to the NIOSH
11 9100 testing protocol, and analyzed pursuant to EPA Test Methods 3050B and 6010B.

12 In addition to the EPA test methods authorized above, the Parties may utilize equivalent
13 methodologies employed by state or federal agencies to determine lead or DEHP content in a solid
14 substance.

15 **2.2 Interim Warnings**

16 Commencing on the Effective Date and continuing thereafter, GSI shall not sell or distribute
17 for sale in California any Products that are not Reformulated Products unless such Products are sold
18 or shipped with a clear and reasonable warning. Each warning shall be prominently placed with such
19 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
20 to be read and understood by an ordinary individual under customary conditions before purchase or
21 use. Each warning shall also be provided in such a manner that the consumer or user understands to
22 which *specific* Product the warning applies.

23 GSI agrees that it will affix a warning to the Product packaging or labeling, if any, or directly
24 on each Product with the following language:

25 **WARNING:** This product contains [*insert appropriate*
26 *chemical, i.e., “Lead,” “DEHP” or “Lead and*
27 *DEHP”*] [*“a chemical” or “chemicals”*] known to
28 the State of California to cause birth defects or
other reproductive harm.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, GSI shall pay \$9,000 in civil penalties. Each civil penalty payment shall
5 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
6 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held.

8 **3.1.1 Initial Civil Penalty**

9 On or before the Effective Date, GSI shall make an initial civil penalty payment of
10 \$3,000. GSI shall provide its payment in two checks for the following amounts made payable to: (a)
11 “OEHHA” in the amount of \$2,250; and (b) “The Chanler Group in Trust for Anthony Held” in the
12 amount of \$750.

13 **3.1.2 Final Civil Penalty**

14 On or before August 1, 2014, GSI shall make a final civil penalty payment of \$6,000.
15 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
16 penalty payment shall be waived in its entirety if, no later than July 15, 2014, an officer of GSI
17 provides Held with written certification that all of the Products it sells or distributes for sale in
18 California as of the date of such certification are Reformulated Products as defined by Section 2.1,
19 and that GSI will continue to offer only Reformulated Products in California in the future. The
20 option to certify reformulation in lieu of making the final civil penalty payment required by this
21 Section is a material term and time is of the essence.

22 **3.2 Reimbursement of Fees and Costs**

23 The parties acknowledge that Held and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
25 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, GSI expressed a desire to resolve Held’s fees and costs.
27 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
28 counsel under general contract principles and the private attorney general doctrine codified at
California Code of Civil Procedure section 1021.5 for all work performed through the mutual

1 execution of this Consent Judgment. On or before the Effective Date, GSI shall pay \$27,000 for the
2 fees and costs incurred by Held investigating, bringing this matter to GSI's attention, and negotiating
3 a settlement in the public interest.

4 **3.3 Payment Procedures**

5 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
6 this Consent Judgment are to be delivered within five days of the Effective date according to the
7 following subsections.

8 **3.3.1 Payment Addresses**

9
10 (a) All payments and tax documentation for Held and his counsel shall be
11 delivered to:

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

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

20 For United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery or Courier:

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

3.3.2 Proof of Payment to OEHHA

GSI shall provide Held's counsel with a copy of the checks sent to OEHHA enclosed
with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

1 **3.3.3 Required Tax Documentation**

2 GSI agrees to provide an IRS 1099 form for its payments under this Consent
3 Judgment to each of the following payees: (a) “Office of Environmental Health Hazard Assessment”
4 (EIN: 68-0284486); (b) “Anthony E. Held,” whose address and tax identification number shall be
5 furnished after this Consent Judgment is fully executed by the Parties; and (c) “The Chanler Group”
6 (EIN: 94-3171522).

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Held’s Public Release of Proposition 65 Claims**

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

18 **4.2 Held’s Individual Release of Claims**

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

26 **4.3 GSI’s Release of Held**

27 GSI, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
attorneys and other representatives, for any and all actions taken or statements made by Held and

1 his attorneys and other representatives, whether in the course of investigating claims, otherwise
2 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

23 For GSI:

24 Ian Scott, President
25 GSI Outdoors, Inc.
26 1023 South Pines Road
27 Spokane Valley, WA 99206
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with a copy to:

Anthony J. Cortez, Esq.
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

For Held:

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

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

9. COUNTERPARTS; FACSIMILE 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.

10. POST EXECUTION ACTIVITIES

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

11. MODIFICATION

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

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12. 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: March 18, 2014

Date: _____

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

By: _____
Ian Scott, President
GSI OUTDOORS, INC.

1 **12. AUTHORIZATION**

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

4 **AGREED TO:**

AGREED TO:

5
6 Date: _____

Date: 03-07-14

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

By: Kathy Scott
Kathy Scott, Secretary Treasurer
GSI OUTDOORS, INC.

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