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

14 Plaintiff,

15 v.

16 KALTEX HOME, INC.; REVMAN
INTERNATIONAL, INC.; and DOES 1-150,
17 inclusive,

18 Defendants.
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Case No. RG13704891

[PROPOSED] CONSENT JUDGMENT

Date:

Time:

Dept: 25

Judge: Hon. Ronni MacLaren

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, PhD., P.E., Kaltex North America, Inc. (incorrectly**
3 **named as Kaltex Home, Inc.), and Revman International, Inc.**

4 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
5 P.E. (“Held” or “Plaintiff”) and defendants Kaltex North America, Inc. (“Kaltex” incorrectly
6 served and named as Kaltex Home, Inc.), and Revman International, Inc. (“Revman”), with
7 Held, Kaltex, and Revman collectively referred to as the “Parties.”

8 **1.2 Anthony E. Held, PhD., P.E.**

9 Held is an individual residing in the State of California who seeks to promote awareness
10 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
11 substances contained in consumer and commercial products.

12 **1.3 Kaltex North America, Inc. and Revman International, Inc.**

13 Kaltex is the parent of Revman. It had no direct involvement with the vinyl/PVC pillows
14 at issue in this case. Revman employs ten or more persons and is a person in the course of doing
15 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health & Safety Code §25249.5 et seq. (“Proposition 65”). Hereafter, unless
17 specified otherwise, Kaltex and Revman are referred to collectively as “Revman.”

18 **1.4 General Allegations.**

19 Held alleged that Revman manufactured, imported, distributed and/or sold vinyl/PVC
20 pillows causing an exposure to lead for use in the State of California without the requisite
21 Proposition 65 warnings. Lead is listed pursuant to Proposition 65 as a chemical known to the
22 State of California to cause cancer.

23 **1.5 Notice of Violation.**

24 Held served Revman and various public enforcement agencies with a document entitled
25 “60-Day Notice of Violation” dated September 9, 2013 alleging that Revman violated
26 Proposition 65 by failing to warn consumers that its vinyl/PVC pillows including, but not limited
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to, the *Tommy Bahama Home Pillow*, #1128381, UPC #8 83893 18410 7, exposed users in California to lead (“Notice”).

1.6 Complaint.

On or about November 27, 2013, Held filed a complaint in the Superior Court in and for the County of Alameda against Kaltex Home, Inc., Revman, and Does 1 through 150, *Held v. Kaltex Home, Inc., et al.*, Case No. RG13704891 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to lead contained in certain vinyl/PVC pillows sold by Revman in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and/or Complaint, or that could have been raised in the Notice and/or Complaint, relating to or arising out of the alleged facts or conduct. Revman denies the factual and legal allegations contained in the Notice and the Complaint, and maintains that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply with its terms, Revman does not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, regulatory, common law or equitable requirements relating to lead in the Covered Products, such being specifically denied by Revman. Nothing in this Consent Judgment is nor shall anything herein be construed as an admission by Revman of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Revman of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense Revman may have in this or any other legal proceeding. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in this action. However, this Section shall not

diminish or otherwise affect the obligations, responsibilities and duties of the Parties under this Consent Judgment.

1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment only, Revman stipulates that this Court has jurisdiction over Revman as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Product[s]” means any vinyl/PVC pillows manufactured, imported, distributed and/or sold in the State of California by Revman including, but not limited to, the *Tommy Bahama Home Pillow, #1128381, UPC #8 83893 18410 7*.

2.2 “Effective Date” means the date seven days after the Court enters this Consent Judgment.

2.3 “Vendor” means a person or entity that manufactures, imports, or supplies a product to Revman.

3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION

3.1 Reformulation Commitment and Standards.

As of the Effective Date, Revman shall only manufacture Covered Products for sale in California which contain less than or equal to 100 parts per million (“ppm”) of lead in each Accessible Component when analyzed pursuant to EPA testing methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance (“Reformulated Covered Products”). By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Revman by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to Revman under such other laws.

3.2 Vendor Notification Requirement.

To the extent it has not already done so, within 15 days of the Effective Date, Revman

shall provide the reformulation standards specified in Section 3.1 for Reformulated Covered Products to any and all of its Vendors of Covered Products or their component parts that will be sold or offered for sale to California consumers, and shall instruct each Vendor to provide only Reformulated Covered Products or component parts that meet the reformulation standards for Reformulated Covered Products in Section 3.1 above.

4. MONETARY PAYMENTS

In settlement of all the claims referred to in this Consent Judgment, Revman shall make the following payments in accordance with this Section 4.

4.1 Payments Pursuant to Health & Safety Code § 25249.7(b).

Each payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the funds remitted to Held, as follows:

4.1.1 Initial Payment Pursuant to Health & Safety Code § 25249.7(b).

Revman shall make an initial payment in the amount of \$3,000.00 no later than the Effective Date. Revman shall issue two separate checks, one payable to: (a) “OEHHA” in the amount of \$2,250.00; and the other payable to (b) “The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in the amount of \$750.00. All payments shall be delivered to the addresses listed in Section 4.3.1 below.

4.1.2 Final Payment Pursuant to Health & Safety Code §25249.7(b).

Revman shall make a final payment in the amount of \$24,000 within 60 days after the Effective Date; however, this final payment shall be waived in its entirety if, within 60 days of the Effective Date, Revman provides to Plaintiff a certification, signed by an Officer of Revman, stating that Revman has complied with Sections 3.1 and 3.2 of this Consent Judgment. The certification in lieu of making the final payment provided by this Section is a material term, and time is of the essence. Unless waived, Revman shall issue two separate checks for its final payment, one payable to: (a) “OEHHA” in the amount of \$18,000; and the other payable to (b)

“The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in the amount of \$6,000.

4.2 Reimbursement of Plaintiff’s Fees and Costs.

The Parties acknowledge that the Parties negotiated the material terms of this Consent Judgment without reaching terms on the amount of fees and costs, thereby leaving the fee and cost issue to be resolved after the material terms of the agreement had been settled. The Parties then reached agreement on the settlement amount, including the compensation to be paid to Held and his 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 (and to be performed) in this matter. Under these legal principles, Revman shall pay the amount of \$34,000.00 to reimburse Plaintiff’s fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment in the public interest, within 15 days of the Effective Date. This payment shall be made payable to The Chanler Group and shall be delivered to the address in Section 4.3.1(a) below.

4.3 Payment Procedures.

4.3.1 Funds Held In Trust

(a) All payments owed to Held, pursuant to Section 4.1 shall be delivered to the following payment address:

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

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(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 4.1 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.3.1(a), as proof of payment to OEHHA.

4.3.2 Issuance of 1099 Forms

After each penalty payment, Revman shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished by Held to Revman after this Consent Judgment has been fully executed by the Parties, and to OEHHA, at the addresses listed in Section 4.3.1 above.

5. CLAIMS COVERED AND RELEASED

5.1 Held, acting on behalf of himself and in the public interest, hereby releases Revman, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and all of its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and any other person or entity to whom they directly or indirectly distribute, distributed, sell, or sold Covered Products ("Downstream Defendant Releasees"), from any alleged or actual violation of Proposition 65 that has been asserted by Held in the public interest

in his Notice and Complaint regarding the alleged failure to warn about exposure to lead in Covered Products manufactured, imported, distributed, or sold by Revman prior to the Effective Date. Revman's compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to lead in Covered Products.

5.2 Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or contingent (collectively "Claims"), against Revman, Defendant Releasees, and Downstream Defendant Releasees arising from any violation or alleged violation of Proposition 65 regarding the failure to warn about exposure with respect to lead in Covered Products manufactured, imported, distributed, or sold prior to the Effective Date.

5.3 Held also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Held, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred

on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

The Parties further understand and agree that this release shall not extend upstream to any entities, other than Revman, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Revman.

5.4 Revman waives any and all Claims against Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products.

6. COURT APPROVAL

6.1 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and discovery orders.

6.2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held promptly shall file and which Revman shall support as reasonably necessary.

6.3 If this Consent Judgment is not approved by the Court by December 31, 2014: (a) the Action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in

any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California, and shall apply only to Covered Products offered for sale in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Revman may provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

7.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

8. NOTICES

8.1 Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) overnight courier, on any Party by the other Party at the following addresses:

To Revman:

Malcolm Weiss, Esq.
Timothy Carlstedt, Esq.
Hunton & Williams LLP
550 South Hope Street
Suite 2000
Los Angeles, CA 90071

To Held:

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

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

9. MODIFICATION

9.1 Modification. This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court, or by motion of any Party and entry of a modified Consent Judgment by the Court.

9.2 Subsequent Legislation. If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the lead content of Covered Products sold in California hereunder, any Party shall be entitled to request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for good cause shown.

9.3 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10. ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter for three years after the Effective Date to implement or modify the Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof, under C.C.P. §664.6.

12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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

AGREED TO:

Date: July 12, 2014

By: *Anthony E. Held*
Plaintiff Anthony E. Held, PhD., P.E.

AGREED TO:

Date: 07/15/2014

By: *Donald W. Williams*
Defendants Kaltex North America, Inc and
Revman International, Inc.