

Christopher Tuttle, State Bar No. 264545
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

PACIFIC RIM VENTURES, INC., *et al.*,

Defendants.

Case No.: RG14736589

[PROPOSED] CONSENT JUDGMENT

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

1. INTRODUCTION

1.1 Parties

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

1.2 Plaintiff

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

1.3 Defendant

Pacific Rim employs ten or more individuals 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”).

1.4 General Allegations

Held alleges that Pacific Rim manufactures, imports, sells, or distributes for sale in California, trunk organizers with vinyl/PVC handles 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.

1.5 Product Description

The products covered by this Consent Judgment are trunk organizers with vinyl/PVC handles containing DEHP that are manufactured, imported, sold, or distributed for sale in California by Pacific Rim including, but not limited to, *Trunk-It Golf Gear Case, Product # MTI001, #14652325, UPC #0 10027 00429 5* (collectively, “Products”).

1.6 Notice of Violation

On or about April 30, 2014, Held served Pacific Rim and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Pacific Rim violated

1 Proposition 65 by failing to warn its customers and consumers in California that the Products expose
2 users to DEHP.

3 **1.7 Complaint**

4 On August 12, 2014, Held filed the instant action (“Complaint”), naming Pacific Rim as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Pacific Rim as to the allegations in the Complaint, that venue is proper in Alameda
19 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the Date this
23 Consent Judgment is approved by the Court.

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

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Pacific Rim shall only
27 purchase for sale, or manufacture for sale in California, “Reformulated Products.” For purposes of
28 this Consent Judgment, Reformulated Products are products that contain a maximum of 1,000 parts

per million DEHP by weight in any accessible component (i.e., any part or feature of a Product that may be touched during use) when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Pacific Rim shall pay \$24,000 in civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held.

3.1.1 Initial Civil Penalty

Within five days of the Effective Date, Pacific Rim shall make an initial civil penalty payment of \$6,000. Pacific Rim shall provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$4,500; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$1,500.

3.1.2 Final Civil Penalty

On September 1, 2015, Pacific Rim shall make a final civil penalty payment of \$18,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than August 15, 2015, an officer of Pacific Rim provides Held with written certification that all of the Products it is selling or distributing for sale in California as of the date of such certification are Reformulated Products as defined by Section 2.1, and that Pacific Rim will continue to offer only Reformulated Products in California in the future. The option to certify reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and with regard to such term, time is of the essence.

1 **3.2 Reimbursement of Fees and Costs**

2 The parties acknowledge that Held and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
4 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
5 other settlement terms had been finalized, Pacific Rim expressed a desire to resolve Held's fees and
6 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
7 his counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this Consent Judgment. Within five days of the Effective Date, Pacific Rim shall pay
10 \$31,000 for the fees and costs incurred by Held investigating, bringing this matter to Pacific Rim's
11 attention, litigating and negotiating a settlement in the public interest.

12 **3.3 Payment Procedures**

13 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
14 this Consent Judgment are due on or before the Effective Date according to the following
15 subsections.

16 **3.3.1 Payment Addresses**

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

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

27 For United States Postal Service Delivery:

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

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

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95812-4010

7 **3.3.2 Proof of Payment to OEHHA**

8 Pacific Rim shall provide Held's counsel with a copy of the check(s) sent to OEHHA
9 enclosed with the penalty payment(s) to Held.

10 **3.3.3 Payments Held in Trust**

11 All payments due under this Consent Judgment shall be held in trust until such time as the
12 Court approves the Parties' settlement. Except the final civil penalty payment required by Section
13 3.1.2, all payments due under this agreement shall be paid when due, and held in trust by Pacific
14 Rim's counsel until the Court grants the motion for approval of this Consent Judgment contemplated
15 by Section 5. Within five days of the Court's approval of this Consent Judgment, Pacific Rim's
16 counsel shall tender the initial civil penalty payments and attorney's fee and costs reimbursements
17 required by Sections 3.1 and 3.2 to Held. With respect to the Final Civil Penalty payment, if by
18 August 15, 2015, Pacific Rim fails to provide Held with a written certification pursuant to Section
19 2.1, then the Final Civil Penalty payment shall be delivered to Held's counsel by September 1, 2015.

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Held's Public Release of Proposition 65 Claims**

22 Held, acting on his own behalf and in the public interest, releases Pacific Rim and its
23 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
24 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
25 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers
26 (including, but not limited to Stein Mart, Inc.), franchisers, cooperative members, licensors and
27 licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned
28 exposures to DEHP from Products sold by Pacific Rim prior to the Effective Date, as set forth in the
Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
Proposition 65 with respect to exposures to failures to warn about DEHP from the Products sold by

1 Pacific Rim before the Effective Date, as set forth in the Notice.

2 **4.2 Held's Individual Release of Claims**

3 Held, in his individual capacity only and *not* in his representative capacity, also provides a
4 release to Pacific Rim, Releasees, and Downstream Releasees which shall be effective as a full and
5 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
6 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
7 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
8 exposures to DEHP in the Products sold or distributed for sale by Pacific Rim before the Effective
9 Date.

10 **4.3 Pacific Rim's Release of Held**

11 Pacific Rim, on its own behalf, and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
13 attorneys and other representatives(or those that could have been taken or made), for any and all
14 actions taken or statements made by Held and his attorneys and other representatives, whether in the
15 course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter,
16 or with respect to the Products.

17 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California
27 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
28 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pacific Rim

may provide written notice to Englander 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 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Pacific Rim from any obligation to comply with any pertinent state or federal toxics control laws.

8. NOTICE

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

For Pacific Rim:

Steve Skinner, President
Pacific Rim Ventures, Inc.
1200 SE 2nd Avenue
Canby, OR 97013

with a copy to:

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

For Held:

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

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 the settlement. In furtherance of obtaining such approval, Held and Pacific Rim agree to mutually employ their best

1 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
2 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
3 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
4 supporting the motion, and appearing at the hearing before the Court.

5 **11. MODIFICATION**

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

9 **12. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13
14 Date: February 20, 2015

Date: 2-19-2015

15
16 By: Anthony E. Held

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

By: Steve Skinner

Steve Skinner, President
PACIFIC RIM VENTURES, INC.