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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

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

12 Plaintiff,

13 v.

14 SUNBELT U.S.A., INC., *et al.*,

15 Defendants.

Case No. RG14738803

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.
4 (“Held”) and Sunbelt U.S.A., Inc. (“Sunbelt”), with Held and Sunbelt each individually referred
5 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
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Sunbelt 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
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Sunbelt manufactures, sells, and/or distributes for sale in California
16 vinyl/PVC eyewear cases that contain di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed
17 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
18 or other reproductive harm. Held alleges that Sunbelt violated Proposition 65 by failing to
19 provide Proposition 65 warnings for exposures to DEHP caused by the vinyl/PVC eyewear cases
20 it manufactures, distributes and/or sells.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are vinyl/PVC eyewear cases
23 containing DEHP that are manufactured, sold, and/or distributed for sale by Sunbelt in
24 California, including, but not limited to, the *Sunbelt Bump Case*, #005198, (UPC No. 0 45733
25 05063 2) (collectively “Products”).

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1.6 Notice of Violation

On or about June 4, 2014, Held served Sunbelt and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Sunbelt violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On August 29, 2014, Held filed the instant action (“Complaint”), naming Sunbelt as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 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 Complaint, or that could have been raised in the Notice and Complaint, arising out of the facts or conduct alleged therein. Sunbelt denies the material, factual, and legal allegations contained in the Notice and Complaint, and it maintains that all of the products that it has manufactured, distributed and/or sold in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Sunbelt’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Sunbelt as to the allegations 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 pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date the
3 Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 Commencing on the Effective Date and continuing thereafter, Sunbelt shall only
6 manufacture or distribute for sale in California, Reformulated Products. For purposes of this
7 Consent Judgment, “Reformulated Products” are Products whose accessible components contain
8 less than 1,000 ppm (0.1%) DEHP content when analyzed pursuant to Environmental Protection
9 Agency testing methodologies 3580A and 8270C, or equivalent methodologies used by state or
10 federal agencies for purposes of determining DEHP content in a solid substance. Held agrees
11 that Products meeting this reformulation standard do not require a warning under Proposition 65
12 for DEHP.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty Payments**

15 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to
16 in this Consent Judgment, Sunbelt shall pay \$6,000 in civil penalties in accordance with this
17 Section. Each civil penalty payment shall be allocated according to Health and Safety Code
18 section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the
19 California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five
20 percent (25%) of the funds remitted to Held. Held’s counsel shall be responsible for remitting
21 Sunbelt’s penalty payment(s) under this Consent Judgment to OEHHA.

22 **3.1.1 Initial Civil Penalty**

23 Within five (5) business days after the Effective Date, Sunbelt shall make an initial
24 civil penalty payment of \$2,000. Sunbelt shall provide its payment in a single check made
25 payable to “Anthony E. Held, Client Trust Account” to be delivered to the address provided in
26 Section 3.4, below.
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1 **3.1.2 Final Civil Penalty**

2 On or before March 15, 2016, Sunbelt shall make a final civil penalty payment of
3 \$4,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that
4 the final civil penalty payment shall be waived in its entirety if, no later than March 1, 2016, an
5 officer of Sunbelt provides Held with written certification that all of the Products manufactured,
6 distributed, or offered for sale in California as of the date of such certification are Reformulated
7 Products as defined by Section 2, and that Sunbelt will continue to offer only Reformulated
8 Products for sale in California in the future. The option to provide such certification in lieu of
9 making the final civil penalty payment required by this Section is a material term, and with
10 regard to such term, time is of the essence.

11 **3.2 Reimbursement of Fees and Costs**

12 The parties acknowledge that Held and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
14 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly
15 after the other settlement terms had been finalized, Sunbelt expressed a desire to resolve Held's
16 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due
17 to Held and his counsel under general contract principles and the private attorney general
18 doctrine codified at California Code of Civil Procedure section 1021.5 for all investigative,
19 expert and other costs, all attorney's fees, and any other work performed through the court's
20 approval of this Consent Judgment. Pursuant to this accord, Sunbelt agrees to pay \$19,000 by
21 check made payable to "The Chanler Group" for the fees and costs incurred by Held
22 investigating, bringing this matter to Sunbelt's attention, and negotiating a settlement in the
23 public interest.

1 **3.3 Payments Held In Trust**

2 With the exception of the final civil penalty payment required by Section 3.1.2, Sunbelt
3 shall deliver all payments required by this Consent Judgment to its counsel within fifteen (15)
4 days of the date that this agreement is fully executed by the Parties. Sunbelts' counsel shall
5 confirm receipt of settlement funds in writing to Held's counsel and, thereafter, hold the amounts
6 paid in trust until such time as the Court grants the motion for approval of the Parties' settlement.
7 Within five business days of the Effective Date, Sunbelt's counsel shall deliver all settlement
8 payments it has held in trust to Held's counsel at the address provided in Section 3.4. In the
9 event the final civil penalty payment required by Section 3.1.2 becomes due prior to the
10 Effective Date, then Sunbelt shall deliver the final civil penalty payment to its attorney to be held
11 in trust until, and disbursed within five (5) business days after, the Effective Date. In the event
12 that any payment required by this Consent Judgment is untimely, the Parties agree and
13 acknowledge that (a) Sunbelt shall be liable to Held for 10% simple interest on any unpaid
14 amount(s); (b) Held may seek to enforce Sunbelt's payment obligations under general contract
15 principles and Code of Civil Procedure section 664.6; and (c) Held shall be entitled to reasonable
16 fees incurred recovering such settlement payments pursuant to general contract principles and
17 Code of Civil Procedure section 1021.5.

18 **3.4 Payment Address**

19 All payments required by this Consent Judgment shall be delivered to the following
20 address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held's Public Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest, releases Sunbelt and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
6 Products, including but not limited to its downstream distributors, wholesalers, customers,
7 retailers, franchisees, cooperative members, licensors and licensees ("Downstream Releasees"),
8 from all claims for violations of Proposition 65 asserted in the public interest in his Notice and
9 Complaint up through the Effective Date based on alleged exposures to DEHP from the Products
10 as set forth in the Notice and Complaint. Compliance with the terms of this Consent Judgment
11 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
12 manufactured, imported, distributed and/or sold after the Effective Date by Sunbelt, the Releasees
13 and Downstream Releasees as alleged in the Notice and Complaint.

14 Held, on his own behalf of and on behalf of his past and current agents, representatives,
15 attorneys, successors, and/or assignees, and in the public interest, hereby waives all rights to
16 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
17 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
18 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
19 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, against
20 Sunbelt, the Releasees, and Downstream Releasees arising from any alleged violation of
21 Proposition 65 regarding the failure to warn about exposures to DEHP in the Products.

22 **4.2 Held's Individual Release of Claims**

23 Held, in his individual capacity only and *not* in his representative capacity, also
24 provides a release to Sunbelt, Releasees, and Downstream Releasees which shall be effective as
25 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
26 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any
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1 nature, character or kind, whether known or unknown, suspected or unsuspected, relating to the
2 Products manufactured, distributed, and/or sold for by Sunbelt up through the Effective Date.

3 **4.3 Sunbelt's Release of Held**

4 Sunbelt, on its own behalf, and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
6 attorneys and other representatives, for any and all actions taken or statements made by Held
7 and his attorneys and other representatives, whether in the course of investigating claims,
8 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
9 Products.

10 **4.4 Mutual Waiver of California Civil Code Section 1542**

11 The Parties each acknowledge they are familiar with Section 1542 of the Civil Code,
12 which provides as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
14 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.

15 The Parties, each on their own behalf, and on behalf of their past and current agents,
16 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
17 all rights and benefits which they may have under, or which may be conferred upon them by the
18 provisions of Civil Code section 1542 as well as under any other state or federal statute or
19 common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights
20 or benefits pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3,
21 above.

22 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

19 For Sunbelt U.S.A., Inc.:

20 Roy Burchett, President
21 Sunbelt U.S.A., Inc.
22 1941 Yeager Avenue
23 La Verne, CA 91750

For Held:

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

23 With a copy to Sunbelt’s counsel:

24 J. Robert Maxwell, Esq.
25 Rogers Joseph O’Donnell
26 311 California Street, 10th Floor
27 San Francisco, CA 94104

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

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

6 **10. POST EXECUTION ACTIVITIES**

7 Held agrees to comply with the reporting form requirements referenced in Health and
8 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
9 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
10 settlement. Held and his counsel have sole responsibility for preparing for preparing and filing
11 the motion to approve this consent judgment. In furtherance of obtaining such approval, Held
12 and Sunbelt agree to mutually employ their best efforts, and that of their counsel, to support the
13 entry of this agreement as judgment, and to obtain judicial approval of their settlement in a
14 timely manner.

15 **11. MODIFICATION**

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

19 **12. AUTHORIZATION**

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

22 **AGREED TO:**

AGREED TO:

23 **APPROVED**
24 *By Anthony Held at 10:31 am, Dec 08, 2015*

Date: 12/1/2015

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

By: Roy Burchett
27 Roy Burchett, President
28 SUNBELT U.S.A., INC.