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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, PhD., P.E.,) Case No. RG14746127
14 Plaintiff,)
15 v.) **[PROPOSED] CONSENT JUDGMENT**
16 SUNLIGHT SUPPLY, INC.; and DOES) **AS TO DEFENDANT SUNLIGHT**
1-150, inclusive,) **SUPPLY, INC.**
17 Defendants.) Date:
Time:
18) Dept: 16
Judge: Hon. Lawrence Appel
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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held”) and defendant Sunlight Supply, Inc. (“Sunlight”), with Held and Sunlight
5 collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Sunlight 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, California Health &
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Sunlight has manufactured, imported, distributed and/or sold water
16 sprayers with metal nozzles causing exposures to lead for sale or use in the State of California
17 without the requisite Proposition 65 warnings. Lead is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause cancer, birth defects and other reproductive
19 harm.

20 **1.5 Notice of Violation**

21 On June 20, 2014, Held served Sunlight and various public enforcement agencies with a
22 document entitled “60-Day Notice of Violation” alleging that Sunlight violated Proposition 65
23 by failing to warn consumers that water sprayers with metal nozzles including, but not limited to,
24 the *Eco Plus Multi Purpose Sprayer for Home and Garden, Product No. 708, 500, UPC # 8*
25 *70883 00584 9*, exposed users in California to lead (the “Notice”).

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1 **1.6 Complaint**

2 On October 28, 2014, Held filed a complaint in the Superior Court in and for the County
3 of Alameda against Sunlight and Does 1 through 150, *Held v. Sunlight Supply, Inc., et al.*, Case
4 No. RG14746127 (“Action”), alleging violations of California Health & Safety Code § 25249.6,
5 based on the alleged exposures to lead contained in certain water sprayers with metal nozzles
6 sold by Sunlight in the State of California.

7 **1.7 No Admission**

8 The Parties enter into this Consent Judgment as a full and final settlement of all claims
9 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
10 arising out of the facts or conduct alleged therein. Sunlight denies the material, factual and legal
11 allegations contained in the Notice and the Complaint, and maintains that all of the products it
12 has manufactured, imported, distributed and/or sold in the State of California, including the
13 Covered Products, have been, and are, in compliance with all laws. By execution of this
14 Consent Judgment and agreeing to comply with its terms, Sunlight does not admit any facts or
15 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
16 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
17 requirements relating to lead in Covered Products, such being specifically denied by Sunlight.
18 Nothing in this Consent Judgment shall be construed as an admission by Sunlight of any fact,
19 conclusion of law, issue of law or violation of law, nor shall compliance with this Consent
20 Judgment constitute or be construed as an admission by Sunlight of any fact, conclusion of law,
21 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
22 impair any right, remedy, argument or defense Sunlight may have in any other future legal
23 proceedings. This Consent Judgment is the product of negotiation and compromise and is
24 accepted by Sunlight for purposes of settling, compromising, and resolving issues disputed in
25 this Action. However, this Section shall not diminish or otherwise affect the obligations,
26 responsibilities and duties of Sunlight under this Consent Judgment.

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1 **1.8 Consent to Jurisdiction.**

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

6 **2. DEFINITIONS**

7 **2.1** “Covered Product[s]” means any water sprayers with metal nozzles containing
8 lead manufactured, imported, distributed and/or sold in the State of California by Sunlight
9 including, but not limited to, the *Eco Plus Multi Purpose Sprayer for Home and Garden*,
10 *Product No. 708, 500, UPC # 8 70883 00584 9*.

11 **2.2** “Effective Date” means the date the Consent Judgment is approved by the Court.

12 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
13 supplies a Covered Product or metal component part thereof to Sunlight.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 **3.1** Commencing on the June 1, 2015, all Covered Products that Sunlight
16 manufactures for sale in California shall include a warning affixed to the packaging, labeling or
17 directly on each Covered Product that states:

18 **WARNING:** This product contains a chemical known
19 to the State of California to cause birth
20 defects and other reproductive harm.

21 **4. MONETARY PAYMENTS**

22 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

23 In settlement of all the claims referred to in this Consent Judgment, Sunlight shall pay a
24 civil penalty of \$4,000 within two (2) days after the Effective Date in one check made payable
25 to: “Anthony Held, Client Trust Account”. The civil penalty payment will be allocated in
26 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
27 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and

1 the remaining 25% retained by Held. The penalty payment shall be delivered to the address
2 listed in Section 4.3 below.

3 **4.2 Reimbursement of Held's Fees and Costs.**

4 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee
6 issue to be resolved after the material terms of the agreement had been settled. Sunlight then
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
8 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
9 to Held and his counsel under general contract principles and the private attorney general
10 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed (and to
11 be performed) in this matter, except fees that may be incurred in connection with a third-party,
12 including the Office of the Attorney General, appeal (if any). Under these legal principles,
13 Sunlight shall pay the amount of \$32,000 to reimburse Held's fees and costs incurred
14 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
15 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
16 Judgment in the public interest. Sunlight shall issue a check payable to "Adams Nye & Becht
17 LLP" in the amount of \$32,000 to be held in trust by Adams Nye & Becht LLP for The Chanler
18 Group. Adams Nye & Becht LLP shall provide The Chanler Group with written confirmation
19 within five (5) days of receipt that the funds have been deposited in a trust account, and within
20 two (2) days after the Effective Date, this payment shall be made payable to The Chanler Group
21 and shall be delivered to the address in Section 4.3 below.

22 **4.3 Payment Address**

23 All payments required by this Consent Judgment shall be delivered to the following
24 address:

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1** Held, acting on behalf of himself and in the public interest, hereby releases
3 Sunlight, its parents, subsidiaries, affiliated entities that are under common ownership, directors,
4 officers, employees, attorneys, shareholders (“Releasees”), and any of its downstream
5 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,
6 licensees, and any other person or entity to whom they directly or indirectly distribute or sell
7 Covered Products (“Downstream Releasees”), from any alleged or actual violation of
8 Proposition 65 that has been asserted by Held in the public interest in his Notice and Complaint
9 regarding the alleged failure to warn about exposure to lead in Covered Products sold or
10 distributed by Sunlight prior to June 1, 2015. Sunlight’s compliance with this Consent Judgment
11 shall constitute compliance with Proposition 65 with respect to lead in Covered Products.

12 **5.2** Held, in his individual capacity only and *not* in his representative capacity, hereby
13 waives all rights to institute or participate in, directly or indirectly, any form of legal action and
14 releases all claims, including, without limitation, all actions, and causes of action, in law or in
15 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
16 expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of
17 any nature whatsoever, fixed or contingent (collectively “Claims”), against Sunlight, Releasees,
18 and Downstream Releasees arising out of alleged or actual exposures to lead in Covered
19 Products sold or distributed by Sunlight prior to June 1, 2015.

20 **5.3** The Parties further understand and agree that the Sections 5.1 and 5.2 releases
21 shall not extend upstream to any entities, other than Sunlight, that manufactured the Covered
22 Products, or any component parts thereof, or any distributors or suppliers who sold the Covered
23 Products, or any component parts thereof, to Sunlight.

24 **5.4** Sunlight waives any and all Claims against Held, his attorneys, and other
25 representatives for any and all actions taken or statements made by Held and his attorneys and
26 other representatives, whether in the course of investigating claims or otherwise seeking
27 enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered
Products.

1 **6. COURT APPROVAL**

2 **6.1** The parties acknowledge that, pursuant to California Health & Safety Code
3 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
4 which Held shall file. The Parties agree to mutually employ their best efforts, and those of their
5 counsel, to support the entry of this agreement as a Consent Judgment and to obtain judicial
6 approval of the settlement in a timely manner. For purposes of this section, “best efforts” shall
7 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers
8 and supporting the motion for judicial approval.

9 **6.2** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
10 and any and all prior agreements between the Parties merged herein shall terminate and become
11 null and void; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
12 documentation, or other part or aspect of the Parties’ settlement discussions, shall have any
13 effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
14 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
15 modify the terms of the Consent Judgment and to resubmit it for judicial approval.

16 **7. GOVERNING LAW**

17 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
18 California, and shall apply only to Covered Products offered for sale in the State of California.
19 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
20 law generally, or as to the Covered Products, or as to lead, then Sunlight may provide written
21 notice to Held of any asserted change in the law, and shall have no further obligations pursuant
22 to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
23 affected.

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1 **8. NOTICES**

2 **8.1** Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by:

4 (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on
5 any Party by the other Party at the following addresses:

6 To Sunlight:	To Held:
7 Craig Hargreaves, President	Proposition 65 Coordinator
8 Sunlight Supply, Inc.	The Chanler Group
9 5408 NE 88 th Street, Suite A-101	2560 Ninth Street
	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

10 With a copy on behalf of Sunlight to:

11 Bruce Nye
12 adams | nye | becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

13 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
14 of address to which all notices and other communications shall be sent.

15 **9. MODIFICATION**

16 **9.1** This Consent Judgment may be modified by written agreement of the Parties and
17 upon entry of a modified Consent Judgment by the Court, or by motion of any Party and entry of
18 a modified Consent Judgment by the Court.

19 **9.2** Any Party seeking to modify this Consent Judgment or to allege a violation
20 thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a
21 motion to modify the Consent Judgment.

22 **10. ENTIRE AGREEMENT**

23 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
26 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
27 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the

1 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
2 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
3 waiver unless set forth in writing between the Parties.

4 **11. RETENTION OF JURISDICTION**

5 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
6 Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
7 provision thereof, under California Code of Civil Procedure § 664.6.

8 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

9 **12.1** This Consent Judgment may be executed in counterparts and by facsimile or
10 portable document format (pdf), each of which shall be deemed an original, and all of which,
11 when taken together, shall constitute one and the same document.

12 **13. AUTHORIZATION**

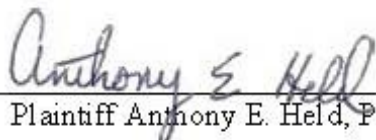
13 **13.1** The undersigned are authorized to execute this Consent Judgment on behalf of
14 their respective Parties and have read, understood, and agree to all of the terms and conditions of
15 this Consent Judgment.

16 **AGREED TO:**

AGREED TO:

17 Date: April 22, 2015

Date: _____

19 By: 
20 Plaintiff Anthony E. Held, Ph.D., P.E.

By: _____
Craig Hargreaves, President
Defendant Sunlight Supply, Inc.

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14 their respective Parties and have read, understood, and agree to all of the terms and conditions of
15 this Consent Judgment.

16 **AGREED TO:**

AGREED TO:

17 Date: _____

Date: 4/23/2015

19 By: _____
20 Plaintiff Anthony E. Held, Ph.D., P.E.

19 By: 
20 Craig Hargreaves, President
21 Defendant Sunlight Supply, Inc.

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