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FILED
ALAMEDA COUNTY
JUN 12 2009
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
TOYS "R" US, INC., *et al.*,
Defendants.

Case No. RG07350981

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT

Date: June 12, 2009
Time: 10:00 a.m.
Dept.: 20
Judge: Hon. Robert Freedman

Reservation No.: R-938162

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant
2 TOYS "R" US, INC., having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Proposition 65 settlement agreement in the form of a Stipulation and
4 [Proposed] Order Re: Consent Judgment entered into by the parties, and following issuance of an
5 order approving this Proposition 65 settlement agreement and entering the Stipulation and Order
6 Re: Consent Judgment on June 12, 2009.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
8 Procedure §664.6, judgment is entered in accordance with the terms of the Stipulation and Order
9 Re: Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

10
11 **IT IS SO ORDERED.**

12
13 Dated: June 12, 2009


14 
15 JUDGE OF THE SUPERIOR COURT
16 Robert B. Freedman

Exhibit 1

1 **HIRST & CHANLER LLP**
2 **DAVID LAVINE (BAR NO. 166744)**
3 2560 Ninth Street
4 Parker Plaza, Suite 214
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9 **PH.D., P.E.**

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17 Attorneys for Defendant
18 **TOYS "R" US, INC.**

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF ALAMEDA**

21 **ANTHONY E. HELD, PH.D., P.E.,**
22 **Plaintiff,**

23 **v.**

24 **TOYS "R" US, INC.; and DOES 1 through 150,**
25 **inclusive,**
26 **Defendants.**

27 **) Case No. RG 07-350891**
28 **) Assigned For All Purposes To The**
) Honorable Robert B. Freedman

) CONSENT JUDGMENT

1. INTRODUCTION

1.1 **Anthony E. Held, Ph.D., P.E., and Toys "R" Us, Inc.** This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. ("Dr. Held" or "Plaintiff") and defendant Toys "R" Us, Inc. ("TRU" or "Defendant"), with Dr. Held and TRU collectively referred to as the "Parties."

1 1.2 **Plaintiff.** Dr. Held is an individual residing in the State of California who seeks
2 to promote awareness of exposure to toxic chemicals and improve human health by reducing or
3 eliminating hazardous substances contained in consumer products.

4 1.3 **Defendant.** TRU employs ten or more persons and is a person in the course of
5 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
6 California Health & Safety Code §25249.5 et seq. ("Proposition 65").

7 1.4 **General Allegations.** Dr. Held alleges that TRU has manufactured, distributed
8 and/or sold certain children's products containing di(2-ethylhexyl)phthalate ("DEHP") for use in
9 the State of California without the requisite health hazard warnings. DEHP is known to cause
10 birth defects and other reproductive harm, and is listed pursuant to Proposition 65.

11 1.5 **Notices of Violation.** On June 26, 2007, Dr. Held served TRU and various public
12 enforcement agencies with a document entitled "60-Day Notice of Violation" that alleged that
13 TRU violated Proposition 65 by failing to warn consumers that "Pretend/Play Food (containing
14 Di(2-ethylhexyl)phthalate)," including "Just Like Home Bologna Sandwich," exposed users in
15 California to DEHP. On November 20, 2007, Dr. Held served TRU, Franklin Sports, Inc., and
16 various public enforcement agencies with a Notice of Violation alleging that Franklin Sports, Inc.
17 and TRU violated Proposition 65 by failing to warn consumers that "Sporting Toys/Children's
18 Items containing Di(2-ethylhexyl)phthalate," including "Sizzlin' Cool Baseball Glove & Ball"
19 exposed users in California to DEHP. On July 10, 2008, Dr. Held served TRU and various public
20 enforcement agencies with two Notices of Violation alleging that TRU violated Proposition 65 by
21 failing to warn consumers that the "Sizzlin' Cool EZ Mitt & Ball" and the "Just Like Home Meal
22 Time" exposed users in California to DEHP. On November 28, 2008, Dr. Held served TRU and
23 various public enforcement agencies with a Notice of Violation alleging that TRU violated
24 Proposition 65 by failing to warn consumers that the "Micro Airtech Football," "Sizzlin' Cool
25 Junior Golf Bag," and the "McDonald McKids 37pc Play Food Set" exposed users in California
26 to DEHP.

27 1.6 **TRU's Actions.** With the exception of the November 28, 2008 Notice, TRU
28 promptly provided notice of the action to the vendor of each of the products identified in each of

1 the five Notices of Violation identified in Section 1.5. TRU asserts that it was informed by the
2 vendor of the Just Like Home Bologna Sandwich and Just Like Home Meal Time products that
3 those products had been reformulated to remove DEHP to levels below 0.1% for shipments as of
4 summer 2007. Franklin Sports accepted the defense of TRU and has since entered into a consent
5 judgment with Dr. Held resolving Dr. Held's claims against Franklin Sports and TRU with regard
6 to the Sizzlin' Cool products. In advance of the January 1, 2009 effective date of a new
7 California statute (AB 1108, Health & Safety Code § 108937) and anticipated federal legislation
8 affecting DEHP in children's products, and in part in response to Dr. Held's notices, TRU began
9 informing its vendors in early 2008 that they would need to reformulate certain products to
10 remove DEHP and other phthalates from children's products. In January 2008 TRU informed its
11 vendors that private label products intended for children under three years of age that were
12 shipped on or after March 1, 2008, must be PVC-free or phthalate-free, and that additional
13 requirements for all other private label products would be forthcoming. On February 19, 2008,
14 TRU informed its vendors that all private label toys and child care articles shipped to TRU on or
15 after July 1, 2008 must comply with AB 1108 and contain less than 0.1% DEHP. On October 7,
16 2008, TRU informed its vendors that all toys and child care articles (as defined in the Consumer
17 Product Safety Improvement Act of 2008 (Public Law 110-314, 122 Stat. 3016 (August 14,
18 2008)) ("CPSIA")), (a) shipped to TRU, via direct import or port-of-entry methods, on or after
19 November 16, 2008, or (b) received at TRU distribution centers or stores (or shipped directly to
20 consumers) on or after December 15, 2008, whichever is earlier, must comply with that Act and
21 contain less than 0.1% DEHP.

22 1.7 **Complaint.** On October 12, 2007, Dr. Held, who is acting in the interest of the
23 general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in
24 and for the County of Alameda against TRU and Does 1 through 150, alleging violations of
25 California Health & Safety Code §25249.6 based on the alleged exposure to DEHP from
26 Pretend/Play Food (containing Di(2-ethylhexyl)phthalate)," including "Just Like Home Bologna
27 Sandwich," as described in the June 26, 2007 Notice. On April 24, 2008, the Court granted
28

1 TRU's motion to strike portions of the complaint, striking references to any PRODUCTS alleged
2 therein other than the Just Like Home Bologna Sandwich.

3 1.8 **Amended Complaint.** On or about March 13, 2009, plaintiff filed a fourth
4 amended complaint ("FAC"). In the FAC, plaintiff alleges exposure to DEHP from *Just Like*
5 *Home Bologna Sandwich, #95051 (#8 01725 95054 6), Just Like Home Meal Time #9108 (#8*
6 *03516 36313 9), Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4), and Micro Airtech*
7 *Football (Fisher Price), Sizzlin' Cool Junior Golf Bag (#7 17851 98747 2), and McDonald*
8 *McKids 37pc Play Food Set, #81423 (#0 45672 81423 4).* At the time of execution of this
9 Consent Judgment, no public enforcer has taken any enforcement action on any of the Notices of
10 Violation identified in Section 1.5.

11 1.9 **No Admission.** The Parties enter into this Consent Judgment as a full and final
12 settlement of all claims that were raised in the amended complaints or that could have been raised
13 in the amended complaints, arising out of the facts or conduct alleged therein. By execution of
14 this Consent Judgment and agreeing to comply with its terms, TRU 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 DEHP in Covered Products. Nothing in this Consent Judgment shall be
18 construed as an admission by TRU of any fact, conclusion of law, issue of law or violation of law,
19 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
20 TRU of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
21 Judgment shall prejudice, waive or impair any right, remedy, argument or defense TRU may have
22 in this or any other or future legal proceedings. This Consent Judgment is the product of
23 negotiation and compromise and is accepted by TRU for purposes of settling, compromising, and
24 resolving issues disputed in this action.

25 1.10 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, TRU
26 stipulate that this Court has jurisdiction over TRU as to the allegations contained in the amended
27 complaints, that venue is proper in the County of Alameda and that this Court has jurisdiction to
28 enter and enforce the provisions of this Consent Judgment.

1 **2. Definitions.**

2 2.1 "Identified Covered Products" means the following products:

3 2.1.1 Just Like Home Bologna Sandwich, #95051 (#8 01725 95054 6)

4 2.1.2 Just Like Home Meal Time #9108 (#8 03516 36313 9)

5 2.1.3 Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4)

6 2.1.4 Micro Airtech Football (Fisher Price),

7 2.1.5 Sizzlin' Cool Junior Golf Bag (#7 17851 98747 2)

8 2.1.6 McDonald McKids 37pc Play Food Set, #81423 (#0 45672 81423 4).

9 2.2 "Private Label Covered Product" means a Toy pretend food or a Toy sporting
10 good made from vinyl that bears a private label as defined in Section 3(a)(12)(B) of the
11 Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2052(a)(12)(B).

12 2.3 "Effective Date" means the date this Consent Judgment is approved by the court.

13 2.4 "Toy" means a finished product that is sold or offered for sale to consumers in
14 California, and is designed or intended primarily for use by a child when the child plays, as
15 defined by ASTM F963-07 and any other final rule, guidance rule, exclusion, or exception
16 authorized by the Consumer Product Safety Commission ("CPSC") pursuant to Section 108 of
17 the CPSIA.

18 **3. INJUNCTIVE RELIEF: REFORMULATION**

19 3.1 Commencing January 1, 2009, TRU shall not sell or offer for sale in California
20 any Identified Covered Product containing DEHP in concentrations exceeding 0.1 percent (1,000
21 parts per million ("ppm")).

22 **4. ENFORCEMENT OF CONSENT JUDGMENT**

23 4.1 **General Enforcement Provisions.** The terms of this Consent Judgment shall be
24 enforced exclusively by the Parties hereto. The Parties may, by motion or application for an
25 order to show cause before the Superior Court of the County of Alameda, enforce the terms and
26 conditions contained in this Consent Judgment, subject to the following provisions:

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28

1 4.2 **Exclusive Enforcement of Section 3.** Any action to enforce this Consent
2 Judgment or Proposition 65 with regard to an Identified Covered Product sold by TRU in
3 California that is alleged to contain DEHP shall be brought exclusively pursuant to Section 4.3.

4 4.3 **Enforcement Procedure for Noncompliant Products.**

5 4.3.1 **Notice of Violation.** In the event that, at any time following the Effective
6 Date, Dr. Held identifies an Identified Covered Product or a Private Label Covered Product that
7 contains in excess of 1,000 ppm DEHP ("Noncompliant Product") offered for sale in a TRU store
8 (i.e., Toys "R" Us or Babies "R" Us) in California, subject to Section 4.3.2, Dr. Held may issue a
9 Notice of Violation pursuant to this Section. The terms of this Section 4.3 shall apply only to a
10 Notice of Violation served on TRU, and shall not apply to any enforcement or other action
11 brought by Dr. Held against the manufacturer, distributor, or importer of a Covered Product sold
12 by TRU.

13 4.3.2 **Identification of Covered Product Supplier and Limitation of**
14 **Remedies.**

15 4.3.2.1 **Request for Identification.** If Dr. Held is unable to
16 identify the manufacturer, distributor, or importer of the Noncompliant Product from publicly-
17 available information, Dr. Held may request in writing that TRU identify the supplier of the
18 Noncompliant Product. Such request shall include legible copies of all purchase receipts, product
19 tags, and labels, and a picture of the Noncompliant Product. Within 15 days of receiving such a
20 request, TRU shall provide Dr. Held with a written response identifying the Supplier of the
21 Noncompliant Product, to the extent it is possible to do so from the information provided by Dr.
22 Held.

23 4.3.2.2 **Limitation of Remedies as to Settled Parties.** If the
24 manufacturer, distributor, or importer of a Noncompliant Product is subject to a Consent
25 Judgment addressing the DEHP content of the Noncompliant Product pursuant to Proposition 65,
26 Dr. Held's sole remedy shall be against such manufacturer, distributor, or importer, and Dr. Held
27 shall not serve a Notice of Violation on TRU pursuant to this Section 4.3.

28

1 4.3.2.3 **Limitation of Remedies as to Other Identified Suppliers.** If
2 the manufacturer, distributor, or importer of the Noncompliant Product is (1) a person in the
3 course of doing business, as that term is used in Health & Safety Code § 25249.11(b), and (2)
4 subject to the jurisdiction of the Superior Court of the State of California in the county in which
5 the alleged violation occurred, Dr. Held's sole remedy regarding the Noncompliant Covered
6 Product shall be against the manufacturer, distributor, or importer of the Noncompliant Covered
7 Product.

8 4.3.3 **Service of Notice of Violation and Supporting Documentation.**

9 4.3.3.1 The Notice of Violation shall be served on TRU within 15 days
10 of the date the alleged violation(s) was or were observed.

11 4.3.3.2 The Notice of Violation shall, at a minimum, set forth for each
12 Noncompliant Product: (1) the date(s) the alleged violation(s) was observed, (2) the location at
13 which the Noncompliant Product was offered for sale, (3) a description of the Noncompliant
14 Product, including any identification of the manufacturer, distributor, or importer of the
15 Noncompliant Product, and (4) all test data obtained by Dr. Held regarding the Noncompliant
16 Product and supporting documentation sufficient for validation of the test results, including all
17 laboratory reports, quality assurance reports and quality control reports associated with testing of
18 the Noncompliant Product. If the manufacturer, distributor, or importer of the Noncompliant
19 Product cannot be identified, the Notice of Violation shall include copies of all purchase receipts,
20 Product tags and labels, and a picture of the Product, unless Dr. Held has provided such
21 information in a request pursuant to Section 4.3.2.

22 4.3.3.3 Dr. Held shall promptly make available for inspection and/or
23 copying upon request all supporting documentation related to the testing of the Noncompliant
24 Product and associated quality control samples, including chain of custody records, all laboratory
25 logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all
26 printouts from all analytical instruments relating to the testing of product samples and any and all
27 calibration, quality assurance, and quality control tests performed or relied upon in conjunction
28 with the testing of the Noncompliant Product, obtained by or available to Dr. Held that pertains to

1 the Noncompliant Product's DEHP content and, if available, any exemplars of Noncompliant
2 Products tested.

3 **4.3.4 Notice of Election of Response.** No more than 15 business days after
4 receiving a Notice of Violation, TRU shall provide written notice to Dr. Held whether it elects to
5 contest the allegations contained in a Notice of Violation ("Notice of Election").

6 **4.3.4.1** If the Notice of Violation did not identify the manufacturer,
7 distributor, or importer of the Noncompliant Product, the Notice of Election shall identify the
8 Supplier of the Noncompliant Product, unless TRU has previously provided such information in
9 response to a request under Section 4.3.2.1.

10 **4.3.4.2** If a Notice of Violation is contested, the Notice of Election shall
11 include all then-available documentary evidence regarding the Noncompliant Product's
12 compliance with the 1,000 ppm DEHP content limit, including all test data, if any. TRU shall
13 promptly make available for inspection and/or copying upon request all supporting
14 documentation as described in Section 4.3.3.3. If TRU or Dr. Held later acquires additional test
15 or other data regarding the alleged violation, it shall notify the other Party and promptly provide
16 all such data or information to the Party.

17 **4.3.4.3** If a Notice of Violation is not contested, the Notice of Election
18 shall include a description of TRU's corrective action pursuant to Section 4.3.7.

19 **4.3.5 Meet and Confer.**

20 **4.3.5.1** If a Notice of Violation is contested, Dr. Held and TRU shall
21 meet and confer for a period of no less than 15 days to attempt to resolve the dispute. If, more
22 than 15 days after service of the Notice of Election, no informal resolution of a Notice of
23 Violation results, and subject to the limitations of Section 4.3.2, Dr. Held may by motion or order
24 to show cause before the Superior Court of Alameda seek to enforce the provisions of this
25 Consent Judgment as to violations of this Consent Judgment arising from Noncompliant
26 Identified Covered Products identified in the Notice of Violation, or may bring an action over any
27 alleged violations of Proposition 65 arising from Noncompliant Private Label Covered Products
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1 identified in the Notice of Violation. No enforcement action may be filed within the 15-day meet
2 and confer period.

3 4.3.5.2 Within 30 days of serving a Notice of Election contesting a
4 Notice of Violation, and if no enforcement action has been filed, TRU may withdraw the original
5 Notice of Election contesting the Notice of Violation and serve a new Notice of Election
6 conceding the violation.

7 4.3.6 **Non-Contested Matters.** If TRU elects not to contest the allegations in a
8 Notice of Violation, it shall undertake corrective action pursuant to Section 4.3.7.

9 4.3.7 **Corrective Action in Non-Contested Matters.** If TRU elects not to
10 contest the allegation, and if the manufacturer, distributor, or importer is not subject to a consent
11 judgment as described in Section 4.3.2.2, TRU shall include in its Notice of Election a detailed
12 description of corrective action that it has undertaken or proposes to undertake to remove the
13 Noncompliant Product identified in the Notice of Violation for sale in California. Corrective
14 action must include instructions to TRU's stores to cease offering the Noncompliant Product
15 identified in the Notice of Violation for sale in California as soon as practicable. TRU shall make
16 available to Dr. Held for inspection and/or copying records and correspondence evidencing the
17 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer
18 pursuant to Section 4.4 before seeking any remedy in court.

19 4.4 **Meet and Confer Requirement.** Any Party may enforce any of the terms and
20 conditions of this Consent Judgment other than TRU's alleged failure to comply with Section 3
21 only after that Party first provides 30 days notice to the Party allegedly failing to comply with the
22 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
23 comply in an open and good faith manner.

24 5. MONETARY PAYMENTS

25 5.1 **Payments Made Pursuant to Health & Safety Code §25249.7(b).** In settlement
26 of all the claims referred to in this Consent Judgment, TRU shall pay \$5,000 to be apportioned in
27 accordance with California Health & Safety Code §25192, with 75% of these funds remitted to
28 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the

1 remaining 25% of the amount remitted to Anthony Held as provided by California Health &
2 Safety Code §25249.12(d). TRU shall issue two separate checks for the payment: (a) one check
3 made payable to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of \$3,750,
4 representing 75% of the total payment; and (b) one check to "Hirst & Chanler LLP in Trust for
5 Anthony Held" in the amount of \$1,250, representing 25% of the total payment. Two separate
6 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA,
7 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five
8 calendar days before the payment is due.

9 Payment shall be delivered to Dr. Held's counsel within ten days of the Effective Date, at
10 the following address:

11 HIRST & CHANLER LLP
12 Attn: Proposition 65 Controller
13 455 Capitol Mall, Suite 605
14 Sacramento, CA 95814

15 **5.2 Reimbursement of Fees and Costs.** Pursuant to Code of Civil Procedure (CCP)
16 §1021.5, TRU shall reimburse Dr. Held and his counsel a total of \$15,000 for fees and costs
17 incurred as a result of investigating, bringing this matter to TRU's attention, and litigating and
18 negotiating a settlement in the public interest. TRU shall issue a separate 1099 for fees and costs
19 (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and to be
20 delivered within ten days of the Effective Date, to the following address:

21 HIRST & CHANLER LLP
22 Attn: Proposition 65 Controller
23 455 Capitol Mall, Suite 605
24 Sacramento, CA 95814

25 **6. CLAIMS COVERED AND RELEASE**

26 **6.1** This Consent Judgment is a full, final, and binding resolution between Dr. Held
27 and TRU and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates,
28 sister companies and their successors and assigns ("Defendant Releasees") of any violation of
Proposition 65 that has been or could have been asserted in the public interest against TRU and
Defendant Releasees regarding the failure to warn about exposure to DEHP arising in connection

1 with Covered Products manufactured, sourced, distributed, or sold by TRU prior to the Effective
2 Date.

3 6.2 Compliance with the terms of this Consent Judgment by TRU and Defendant
4 Releasees resolves any issue from the Effective Date into the future concerning compliance by
5 TRU and Defendant Releasees regarding failure to warn about exposure to DEHP arising in
6 connection with private label Covered Products manufactured, sourced, distributed or sold by
7 TRU and Defendant Releasees after the Effective Date.

8 6.3 Dr. Held on behalf of himself, his past and current agents, representatives,
9 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all
10 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
11 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
12 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
13 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
14 whether known or unknown, fixed or contingent (collectively "Claims"), against TRU and
15 Defendant Releasees arising from any violation of Proposition 65 regarding the failure to warn
16 about exposure to DEHP arising in connection with Covered Products manufactured, sourced,
17 distributed or sold by TRU and Defendant Releasees prior to or after the Effective Date.

18 6.4 Dr. Held on behalf of himself, his past and current agents, representatives,
19 attorneys, successors, and/or assignees, but *not* in his representative capacity hereby waives all
20 Claims against TRU and Defendant Releasees arising from any violation of Proposition 65 or that
21 were or could have been asserted regarding the alleged failure to warn about exposure to DEHP
22 and other phthalates, including but not limited to butyl benzyl phthalate ("BBP"), di-n-butyl
23 phthalate ("DBP"), di-n-hexyl phthalate ("DnHP"), or di-isodecyl phthalate ("DIDP"), arising in
24 connection with any products manufactured, sourced, distributed or sold by TRU and Defendant
25 Releasees prior to or after the Effective Date, or any claim based on the facts or conduct alleged
26 in the amended complaints, or facts similar to those alleged. In this regard, Dr. Held in his
27 individual capacity only, specifically waives the provisions of section 1542 of the California Civil
28 Code, which provides as follows:

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

6 6.5 The provisions of Sections 6.1 through 6.4 shall not extend to any entities that
7 manufactured the Covered Products or any component parts thereof, or any distributors or
8 suppliers who sold the Covered Products or any component parts thereof to TRU, unless such
9 entity is a Defendant Releasee.

10 6.6 **Defendant's Release of Dr. Held.** TRU and Defendant Releasees waive any and
11 all claims against Dr. Held, his attorneys, and other representatives for any and all actions taken
12 or statements made (or those that could have been taken or made) by Dr. Held and his attorneys
13 and other representatives, whether in the course of investigating claims or otherwise seeking
14 enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered
15 Products.

16 7. COURT APPROVAL

17 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
18 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
19 including all pleading, procedural, and discovery orders.

20 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code §25249.7(f).

22 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
23 and any and all prior agreements between the parties merged herein shall terminate and become
24 null and void, and the action shall revert to the status that existed prior to the execution date of
25 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
26 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
27 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
28 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.

1 **8. ATTORNEYS' FEES**

2 8.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
4 unless the unsuccessful Party has acted with substantial justification. For purposes of this
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
6 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

7 8.2 Except as specifically provided in Section 5.2 and 8.1, each Party shall bear its
8 own costs and attorney's fees in connection with this action.

9 8.3 Nothing in this Section 8 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

11 **9. GOVERNING LAW**

12 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California, and shall apply only to Covered Products offered for sale in the State of California. In
14 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
15 generally, or as to the Products, then TRU may provide written notice to Dr. Held of any asserted
16 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
17 respect to, and to the extent that, the Products are so affected.

18 9.2 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
22 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
23 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
24 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
25 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
26 this regard, the Parties hereby waive California Civil Code § 1654.

27 **10. NOTICES**

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1 10.1 Unless specified herein, all correspondence and notices required to be provided
2 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
3 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
4 Party by the other Party at the following addresses:

5 To TRU:

6 Joel S. Tennenberg, Esq.
7 Litigation and Regulatory Counsel
8 Toys "R" Us, Inc.
9 One Geoffrey Way
10 Wayne, NJ 07470

11 With a copy to:

12 Jeffrey B. Margulies, Esq.
13 FULBRIGHT & JAWORSKI LLP
14 555 South Flower Street
15 41st Floor
16 Los Angeles, California 90071

17 To Dr. Held:

18 Proposition 65 Coordinator
19 HIRST & CHANLER LLP
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

23 10.2 Any Party, from time to time, may specify in writing to the other Party a change of
24 address to which all notices and other communications shall be sent.

25 **11. MODIFICATION**

26 11.1 **Modification.** This Consent Judgment may be modified by written agreement of
27 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
28 Party and entry of a modified Consent Judgment by the court.

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

1 11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
3 modify the Consent Judgment.

4 **12. ENTIRE AGREEMENT**

5 12.1 This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
8 and therein. There are no warranties, representations, or other agreements between the Parties
9 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
10 other than those specifically referred to in this Consent Judgment have been made by any Party
11 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
12 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
13 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
14 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall
15 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
16 similar, nor shall such waiver constitute a continuing waiver.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

21 14.1 This Consent Judgment may be executed in counterparts and by facsimile or
22 portable document format (pdf), each of which shall be deemed an original, and all of which,
23 when taken together, shall constitute one and the same document.

24 **15. AUTHORIZATION**

25 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
26 their respective Parties and have read, understood, and agree to all of the terms and conditions of
27 this Consent Judgment.

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AGREED TO: Date: <u>April 2, 2009</u> By: <u>Anthony E Held</u> Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: <u>April 6, 2009</u> By: <u>M. T. [Signature]</u> Defendant, TOYS "R" US, INC.
APPROVED AS TO FORM: Date: <u>Apr. 2, 2009</u> HIRST & CHANLER LLP By: <u>[Signature]</u> David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: <u>April 7, 2009</u> FULBRIGHT & JAWORSKI LLP By: <u>[Signature]</u> Jeffrey B. Margulies Attorneys for Defendant TOYS "R" US, INC.

IT IS SO ORDERED.

Date: _____
JUDGE OF THE SUPERIOR COURT