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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 23 2009

ALAN CHAMBERS, CLERK OF THE COURT

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SUPERIOR COURT OF CALIFORNIA
CENTRAL JUSTICE CENTER

C. Ramos
BY C RAMOS

OCT 23 2009

BY: E. IBARRA

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

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,

v.

VOLUME DISTRIBUTORS, INC., and
~~DOES 1 through 150, inclusive,~~
Defendants.

Case No. 30-2009-00118726

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

Date: December 18, 2009
Time: 11:00 a.m.
Dept.: C32
Judge: Hon. Steven L. Perk

BY FAX

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant
2 VOLUME DISTRIBUTORS, INC., having agreed through their respective counsel that
3 judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the
4 form of a Stipulation and [Proposed] Order Re: Consent Judgment ("Consent Judgment")
5 entered into by the parties, and following issuance of an order approving this Proposition 65
6 settlement agreement and entering the Consent Judgment on December 18, 2009.

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

10
11 **IT IS SO ORDERED.**

12
13 Dated: 12/27/09

STEVEN L. PERK

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
David Lavine, State Bar No. 166744
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, California 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, Ph.D., P.E.,

14 Plaintiff,

15 v.

16 VOLUME DISTRIBUTORS, INC., and
17 DOES 1-150, inclusive,

18 Defendant.
19

Case No. 30-2009-00118726

**STIPULATION AND [PROPOSED] ORDER
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Volume Distributors, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Held"), and Volume Distributors, Inc. ("Volume"), with Held and Volume together
5 referred to 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 Volume employs ten or more persons and are persons in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Volume has manufactured, distributed, and/or sold in the State of
15 California vinyl bathroom toys/children's items containing di(2-ethylhexyl)phthalate ("DEHP").
16 DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical known to
18 the State of California to cause birth defects and other reproductive harm. DEHP is referred to
19 herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as vinyl bathroom
22 toys/children's items containing di(2-ethylhexyl)phthalate including, but not limited to, *Bébelle*
23 *Bath Sponge with Animal Head, Item # CHN-1844 (#7 49732 01844 9)*. All such products
24 containing DEHP are referred to hereinafter as the "Products".

25 **1.6 Notice of Violation**

26 On July 10, 2008, Held served Volume Distributors, Inc. and various public enforcement
27 agencies with a "60-Day Notice of Violation" (the "Notice") that provided Volume with notice of
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1 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the
2 Products that Volume sold exposed users in California to the Listed Chemical.

3 **1.7 Complaint**

4 On February 18, 2009, Dr. Held, who was and is acting in the interest of the general
5 public in California, filed a complaint in the Orange County Superior Court naming Volume as a
6 defendant and alleging violations of Health & Safety Code §25249.6 by Volume based on the
7 alleged exposures to DEHP contained in the Products manufactured, distributed and/or offered
8 for sale in California by Volume ("Complaint").

9 **1.8 No Admission**

10 Volume denies the material factual and legal allegations contained in Held's Notice and
11 maintains that all products that it has sold and distributed in California, including the Products,
12 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
13 construed as an admission by Volume of any fact, finding, issue of law, or violation of law, nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by
15 Volume of any fact, finding, conclusion, issue of law or violation of law, such being specifically
16 denied by Volume. However, this section shall not diminish or otherwise affect the obligations,
17 responsibilities and duties of Volume under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has
20 jurisdiction over Volume as to the allegations contained in the Complaint, that venue is proper in
21 the County of Orange and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 9,
25 2009.

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

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, Volume shall not sell, ship, or offer to be shipped for
4 sale in California any Product unless such Product is sold or shipped with one of the clear and
5 reasonable warnings set forth in subsections 2.1(a) and (b), is otherwise exempt pursuant to
6 Section 2.2, or complies with the reformulation standards set forth in Section 2.3.

7 Each warning shall be prominently placed with such conspicuousness as compared with
8 other words, statements, designs, or devices as to render it likely to be read and understood by an
9 ordinary individual under customary conditions before purchase or use. Each warning shall be
10 provided in a manner such that the consumer or user understands to which *specific* Product the
11 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
12 arise.

13 **(a) Retail Store Sales.**

14 **(i) Product Labeling.** Volume may affix a warning to the packaging,
15 labeling, or directly on each Product sold in retail outlets in California by Volume or its agents,
16 that states:

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

20 **(ii) Point-of-Sale Warnings.** Alternatively, Volume may provide
21 warning signs in the form below to its customers in California with instructions to post the
22 warnings in close proximity to the point of display of the Products.

23 **WARNING:** This product contains DEHP, a phthalate
24 chemical known to the State of California to
25 cause birth defects and other reproductive
 harm.

26 Where more than one Product is sold in proximity to other like items or to those that do
27 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following
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1 **WARNING:** Certain products identified with this
2 symbol ▼ and offered for sale in this
3 catalog contain DEHP, a phthalate
4 chemical known to the State of California
5 to cause birth defects and other
6 reproductive harm.

7 The designated symbol must appear on the same page and in close proximity to the
8 display and/or description of the Product. On each page where the designated symbol appears,
9 Volume must provide a header or footer directing the consumer to the warning language and
10 definition of the designated symbol.

11 If Volume elects to provide warnings in the mail order catalog, then the warnings must be
12 included in all catalogs offering to sell one or more Products printed after the Effective Date.

13 (ii) **Internet Website Warning.** A warning may be given in
14 conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the
15 same web page on which the Product is displayed; (b) on the same web page as the order form for
16 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
17 displayed to a purchaser during the checkout process. The following warning statement shall be
18 used and shall appear in any of the above instances adjacent to or immediately following the
19 display, description, or price of the Product for which it is given in the same type size or larger
20 than the Product description text:

21 **WARNING:** This product contains DEHP, a phthalate
22 chemical known to the State of California to
23 cause birth defects and other reproductive
24 harm.

25 Alternatively, the designated symbol may appear adjacent to or immediately following the
26 display, description, or price of the Product for which a warning is being given, provided that the
27 following warning statement also appears elsewhere on the same web page, as follows:

28 **WARNING:** Products identified on this page with the
 following symbol contain DEHP, a
 phthalate chemical known to the State of
 California to cause birth defects and other
 reproductive harm: ▼.

1 **2.2 Exceptions To Warning Requirements**

2 The warning requirements set forth in Section 2.1 shall not apply to:

- 3 (i) Any Product manufactured by Volume prior to the Effective Date; or
4 (ii) Reformulated Products (as defined in Section 2.3 below).

5 **2.3 Reformulation Standards**

6 Reformulated Products are defined as those Products containing less than or equal to
7 1,000 parts per million ("ppm") of the Listed Chemical. The warnings required pursuant to
8 Section 2.1 above shall not be required for Reformulated Products.

9 **2.4 Reformulation Commitment**

10 Volume hereby commits that one hundred percent (100%) of the Products that it
11 manufactures after the Effective Date for sale in California shall qualify as Reformulated
12 Products.

13 **3. MONETARY PAYMENTS**

14 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

15 In settlement of all the claims referred to in this Consent Judgment against it, Volume
16 shall pay \$3,000 in civil penalties to be apportioned in accordance with California Health &
17 Safety Code §25192, with 75% of these funds remitted to the State of California's Office of
18 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held
19 as provided by California Health & Safety Code §25249.12(d). Volume shall issue two separate
20 checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for
21 the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
22 amount of \$2,250, representing 75% of the total penalty, and (b) one check to Hirst & Chanler
23 LLP in Trust for Held in the amount of \$750, representing 25% of the total penalty. Two
24 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,
25 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be
26 furnished, upon request. The payments shall be delivered on or before the Effective Date to the
27 following address:
28

1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710

4 **4. REIMBURSEMENT OF FEES AND COSTS**

5 **4.1 Attorney Fees and Costs**

6 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
8 issue to be resolved after the material terms of the agreement had been settled. After the other
9 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
10 compensation due to Held and his counsel under general contract principles and the private
11 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
12 work performed through the mutual execution of this agreement. Volume shall reimburse Held
13 and his counsel for fees and costs incurred as a result of investigating, bringing this matter to
14 Volume's attention, litigating and negotiating a settlement in the public interest, and seeking
15 court approval of the settlement, in the amount of \$20,000. Volume shall issue a separate 1099
16 for fees and costs (EIN: 20-3929984) and shall make the checks payable to "Hirst & Chanler
17 LLP". One-half of this payment shall be delivered on or before the Effective Date, and one-half
18 on or before November 25, 2009, to the following address:

19 Hirst & Chanler LLP
20 Attn: Proposition 65 Controller
2560 Ninth Street
21 Parker Plaza, Suite 214
Berkeley, CA 94710

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of Volume and Downstream Customers**

24 In further consideration of the promises and agreements herein contained, and for the
25 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
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1 form of legal action and releases all claims, including, without limitation, all actions, and causes
2 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
3 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
4 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
5 (collectively "Claims"), that were brought or could have been brought against Volume or its
6 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
7 shareholders, agents, employees, and sister and parent entities and each of Volume's downstream
8 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
9 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
10 their respective officers, directors, attorneys, representatives, shareholders, agents, employees and
11 sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any other
12 statutory or common law Claims that could have been asserted including such Claims as relate to
13 Volume and each of its Releasees' alleged failure to warn about exposures to or identification of
14 the Listed Chemical contained in the Products.

15 **5.2 Volume's Release of Held**

16 Volume waives any and all claims against Held, his attorneys and other representatives,
17 for any and all actions taken or statements made (or those that could have been taken or made) by
18 Held and his attorneys and other representatives, whether in the course of investigating claims or
19 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
20 the Products.

21 **6. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and
23 shall be null and void if, for any reason, it is not approved and entered by the Court within one
24 year after it has been fully executed by all parties, in which event any monies that have been
25 provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded
26 within fifteen (15) days after receiving written notice from Volume that the one-year period has
27 expired.

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1 **7. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **8. 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 or
8 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the
9 Products, then Volume shall provide written notice to Held of any asserted change in the law, and
10 shall have no further obligations pursuant to this consent judgment with respect to, and to the
11 extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
12 relieve Volume from any obligation to comply with any pertinent state or federal toxics control
13 laws.

14 **9. NOTICES**

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

19 **To Volume:**
20 Charles Rahban, President
21 Volume Distributors, Inc.
21 4199 Bandini Boulevard
21 Los Angeles, CA 90023

22 **To Held:**
23 Proposition 65 Coordinator
23 Hirst & Chanler, LLP
24 2560 Ninth Street
24 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

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

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1 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same documents.

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

6 Held agrees to comply with the reporting form requirements referenced in California
7 Health & Safety Code § 25249.7(f).

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed
10 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
11 obtaining such approval, Held, Volume and their respective counsel agree to mutually employ
12 their best efforts to support the entry of this agreement as a Consent Judgment and obtain
13 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
14 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
15 papers, asserting any oral argument in support of the required motion for judicial approval, and
16 defending any appellate review of the Court's approval.

17 **13. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the parties
19 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful
20 motion of any party and entry of a modified consent judgment by the Court.

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1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

6 Date: **APPROVED**
By Anthony Held at 1:59 pm, Oct 06, 2009

7
8 By: Anthony E Held
9 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 10/2/09

By: Charles Rahban
Charles Rahban, President
Defendant, VOLUME DISTRIBUTORS, INC

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