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ENDORSED
FILED
San Francisco County Superior Court

MAR 29 2010

CLERK OF THE COURT

BY: _____
Deputy Clerk

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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 CVS PHARMACY, INC., *et al.*,

20 Defendants.
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Case No. CGC-09-483979

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT

Date: March 29, 2010

Time: 9:30 a.m.

Dept.: 301

Judge: Hon. Peter Busch

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
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 6 ANTHONY E. HELD, Ph.D., P.E.

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 8 1999 Harrison Street, Suite 2400
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10 Attorneys for Defendant
 11 CVS PHARMACY, INC.

12
 13 SUPERIOR COURT OF CALIFORNIA
 14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
 15 UNLIMITED CIVIL JURISDICTION

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

18 Plaintiff,

19 vs.

20 CVS PHARMACY, INC.; CVS CAREMARK
 21 CORPORATION; and DOES 1-150, inclusive,

22 Defendants.

Case No. CGC-09-483979

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

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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and CVS Pharmacy, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Dr. Held" or "Plaintiff") and defendant CVS Pharmacy, Inc. ("CVS" or "Defendant"), with
5 Plaintiff and Defendant collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Dr. 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 products.

10 **1.3 Defendant**

11 CVS 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 § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that CVS has manufactured, distributed and/or sold bibs containing di(2-
16 ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the requisite health
17 hazard warnings. DEHP is known to cause birth defects and other reproductive harm and is listed by
18 its chemical nomenclature pursuant to Proposition 65. DEHP listed by the State of California under
19 Proposition 65 shall be referred to hereinafter as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as bibs containing the
22 plasticizer phthalate DEHP, such as *Mayware Cotton Bib with Prints* (#8 40928 00006 1), which
23 CVS manufactured, distributed, and/or sold in the State of California. All such bibs containing
24 DEHP are referred to hereinafter as the "Covered Products".

25 **1.6 Notice of Violation**

26 On August 14, 2008, Dr. Held served CVS and the Office of the California Attorney General,
27 all California counties' District Attorneys and all City Attorneys of California cities with populations
28 exceeding 750,000 (collectively, "Public Enforcers") with a document entitled "60-Day Notice of

1 Violation" ("Notice") that provided CVS and the Public Enforcers with notice of alleged violations
2 of Proposition 65 in connection with the sale of the Covered Products containing the Listed
3 Chemical. To the best of the Parties' knowledge, no Public Enforcer has diligently prosecuted any
4 of the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On January 8, 2009, Dr. Held filed a Complaint ("Complaint" or "Action") in the Superior
7 Court for the County of San Francisco against CVS alleging violations of Proposition 65 based on
8 CVS's failure to give clear and reasonable warnings before allegedly causing exposures to the Listed
9 Chemical contained in the Covered Products.

10 **1.8 No Admission**

11 CVS denies the material factual and legal allegations contained in the Notice and Complaint,
12 and maintains that all Covered Products that it has sold and distributed in California have been and
13 are in compliance with all laws, including, without limitation, Proposition 65. Nothing in this
14 Consent Judgment shall be construed as an admission by CVS of any fact, finding, issue of law, or
15 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
16 admission by CVS of any fact, finding, conclusion, issue of law, or violation of law, such being
17 specifically denied by CVS. In order to avoid further litigation costs and attorneys' fees, CVS
18 chooses to resolve this matter with Dr. Held through settlement as set forth herein. However, this
19 Section shall not diminish or otherwise affect CVS' obligations, responsibilities, and duties under
20 this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over CVS as to the allegations contained in the Complaint, that venue is proper in the
24 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of
25 this Consent Judgment as a full and binding resolution of all claims which were or could have been
26 raised in the Complaint against CVS based on the facts alleged therein and in the Notice.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1,
3 2009.

4 **2. INJUNCTIVE RELIEF: REFORMULATION**

5 **2.1** After the Effective Date, CVS agrees not to sell in California or offer for sale in
6 California any Covered Products containing more than 1,000 parts per million ("ppm") of the Listed
7 Chemical. By entering this Consent Judgment, the Parties do not intend to expand or restrict any
8 obligations or responsibilities that may be imposed upon CVS by laws other than Proposition 65, nor
9 do the Parties intend this Consent Judgment to affect any defenses available to CVS under laws other
10 than Proposition 65.

11 **3. MONETARY PAYMENTS**

12 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

13 In settlement of all the claims referred to in this Consent Judgment, CVS shall pay \$4,000.00
14 in civil penalties to be apportioned in accordance with California Health & Safety Code § 25192,
15 with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
16 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as
17 provided by California Health & Safety Code § 25249.12(d). CVS shall issue two separate checks
18 for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust For
19 OEHHA" in the amount of \$3,000.00, representing 75% of the total penalty; and (b) one check to
20 "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$1,000.00 representing 25% of
21 the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
22 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall
23 be provided five calendar days before the payment is due. Payment shall be delivered to Dr. Held's
24 counsel on or before October 16, 2009 at the following address:

25 HIRST & CHANLER LLP
26 Attn: Proposition 65 Controller
27 2560 Ninth Street, Suite 214
28 Berkeley, CA 94710

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

2 **4.1 Attorney Fees and Costs**

3 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
 4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
 5 issue to be resolved after the material terms of the agreement had been settled. CVS then expressed
 6 its preference to resolve the fee and cost issue shortly after the other settlement terms had been
 7 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
 8 Held and his counsel under general contract principles and the private attorney general doctrine
 9 codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the
 10 mutual execution of this agreement. CVS shall reimburse Dr. Held and his counsel for fees and
 11 costs incurred as a result of investigating, bringing this matter to CVS' attention, and litigating and
 12 negotiating a settlement in the public interest. CVS shall pay Dr. Held and his counsel \$29,500.00
 13 for all attorneys' fees and costs. CVS shall issue a separate 1099 for fees and costs (EIN: 20-
 14 3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or
 15 before October 16, 2009, to the following address:

16 HIRST & CHANLER LLP
 17 Attn: Proposition 65 Controller
 18 2560 Ninth Street, Suite 214
 19 Berkeley, CA 94710

19 **4.2 Additional Attorneys' Fees and Costs in Seeking Judicial Approval**

20 Pursuant to CCP §§ 1021 and 1021.5, the Parties agree that CVS will reimburse Dr. Held and
 21 his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement
 22 agreement in the trial court and performing other necessary tasks after the execution of this
 23 agreement, in an amount not to exceed \$2,000.00. Such additional fees and costs, exclusive of fees
 24 and costs that may be incurred in the event of an appeal include, but are not limited to, drafting and
 25 filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health &
 26 Safety Code § 25249.7(f), complying with any applicable judicial counsel coordination of related
 27 cases, corresponding with opposing counsel responding to any third party objections, filing a notice
 28 of entry of approval, and appearing before the Court in relation to the approval process.

1 Reimbursement of such additional fees and costs shall be due within ten days after receipt of
2 a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee Claim
3 shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the following
4 address:

5 HIRST & CHANLER LLP
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Berkeley, CA 94710

9 CVS has the right to object to such reimbursement and may submit the resolution of this issue
10 to the American Arbitration Association (AAA) in Northern California to determine the
11 reasonableness of the additional fees and costs sought, provided that a notice of objection or decision
12 to arbitrate is received by Dr. Held by the end of the ten calendar days of receipt of invoice. If an
13 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the
14 Court pursuant to both CCP § 1021.5 and this settlement agreement to recover additional attorneys'
15 fees and costs incurred as set forth in this paragraph.

16 **5. RELEASE OF ALL CLAIMS**

17 **5.1 Dr. Held's Release of CVS**

18 In further consideration of the promises and agreements herein contained, and for the
19 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
20 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
21 the interest of the general public, hereby waives all rights to institute or participate in, directly or
22 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
23 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
24 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
25 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
26 (collectively "Claims"), against CVS and each of its distributors, wholesalers, suppliers, including,
27 but not limited to, Midway Importing, Inc., licensors, licensees, auctioneers, retailers, franchisees,
28 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
and their respective officers, directors, attorneys, representatives, shareholders, agents, and

1 employees, and sister and parent entities (collectively "Releasees"). This release is limited to those
2 claims that arise under Proposition 65 as such claims relate to CVS' alleged failure to warn about
3 exposures to or identification of the Listed Chemical contained in the Covered Products.

4 **5.2 CVS' Release of Dr. Held**

5 CVS waives any and all claims against Dr. Held, his attorneys, and other representatives for
6 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
7 Held and his attorneys and other representatives, whether in the course of investigating claims or
8 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to
9 the Covered Products.

10 **6. SEVERABILITY**

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

14 **7. ATTORNEYS' FEES**

15 In the event that, after the execution of this proposed Consent Judgment: (1) a dispute arises
16 with respect to any provision of this proposed Consent Judgment; or (2) either party takes reasonable
17 and necessary steps to enforce the terms of this Consent Judgment, the prevailing party in such
18 dispute or enforcement action shall be entitled to reasonable attorneys' fees and costs. Further, CVS
19 shall not be imposed a penalty for violating paragraph 2.1 of this Consent Judgment if it reasonably
20 relied on written statements, confirmations or verifications as to the DEHP content of the Covered
21 Products by the manufacturers, distributors and/or suppliers of the bibs that it sells in its California
22 stores.

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1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Covered Products, then CVS shall
5 provide written notice to Dr. Held of any asserted change in the law, and shall have no further
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected.

8 **9. NOTICES**

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

13 To CVS:

14 Karen Feisthamel, Esq.
15 Senior Legal Counsel
16 CVS PHARMACY
17 One CVS Drive
18 Woonsocket, Rhode Island 02895

To Dr. Held:

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

17 With a copy to:

18 John E. Dittoe
19 REED SMITH LLP
20 101 Second Street Suite 1800
21 San Francisco, CA 94105

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

23 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute
26 one and the same document. A facsimile or .pdf signature shall be as valid as the original.

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

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

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to Approve the Agreement ("noticed motion") is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held, CVS and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

13. **MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Dr. Held shall be entitled to his reasonable fees and costs incurred in the modification process under CCP § 1021.5 if CVS seeks to modify the terms of this Consent Judgment.

14. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

APPROVED
By Tony Held at 4:46 pm, Oct 01, 2009

Date: _____

Date: _____

By: Anthony E. Held
ANTHONY HELD, Ph.D., P.E.

By: _____
Karen Feisthamel, Senior Legal Counsel
CVS PHARMACY, INC.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(D)

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to Approve the Agreement ("noticed motion") is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held, CVS and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

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14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: October 2, 2009

By: _____
ANTHONY HELD, Ph.D., P.E.

By: [Signature]
Karen Feisthamel, Assistant
Secretary/Senior Legal Counsel
CVS PHARMACY, INC.

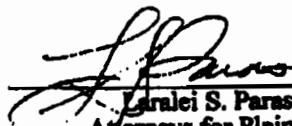
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APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 10-1-2009
HIRST & CHANLER LLP

Date: 10/5/09
REED SMITH LLP

By: 
Laralei S. Paras
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: 
John E. Dittoe
Attorneys for Defendant
CVS PHARMACY, INC.

IT IS SO ORDERED

Date: _____

Judge of the Superior Court

REED SMITH LLP
A limited liability partnership formed in the State of Delaware