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

**FILED**  
San Francisco County Superior Court

NOV 16 2009

GORDON PARK-LI, Clerk  
BY: *Judith C. [Signature]*  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

NEWELL RUBBERMAID, INC.;  
SANFORD, L.P., *et al.*,

Defendants.

*(JCH)*

Case No. CGC-09-491273

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

Date: November 16, 2009  
Time: 9:30 A.M.  
Dept.: 301  
Judge: Hon. Peter Busch

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant NEWELL RUBBERMAID, INC., SANFORD, L.P. having agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the parties, and after issuing an order approving this Proposition 65 settlement agreement and entering the Consent Judgment on November 16, 2009.

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

**IT IS SO ORDERED.**

Dated: 11/16/09

  
JUDGE OF THE SUPERIOR COURT  
PETER J. BUSCH

# **EXHIBIT 1**

1 Clifford A. Chanler, State Bar No. 135534  
Daniel Bornstein, State Bar No. 181711  
2 HIRST & CHANLER LLP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
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4 Telephone: (510) 848 8880  
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5  
6 Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 ANTHONY E. HELD, PH.D., P.E., ) Case No. CGC-09-491273  
12 )  
Plaintiff, ) (PROPOSED)  
13 ) CONSENT JUDGMENT  
v. )  
14 )  
NEWELL RUBBERMAID INC., SANFORD, )  
15 L.P., )  
16 Defendants. )  
17 )  
18 )

19 1. INTRODUCTION

20 1.1 The Parties

21 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,  
22 P.E. ("Dr. Held" or "Plaintiff") and Defendants Newell Rubbermaid Inc. and Sanford, L.P.  
23 (collectively "Newell Rubbermaid" or "Defendant"), with Plaintiff and Defendant collectively  
24 referred to as the "Parties."

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**1.2 Plaintiff**

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

**1.3 Defendant**

Newell Rubbermaid employs 10 or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (Proposition 65).

**1.4 General Allegations**

Dr. Held alleges that Newell Rubbermaid has manufactured, distributed and/or sold children’s vinyl bags marketed as school supplies, such as the Sanford Brands Rubbermaid SpaceMaker #1737358 containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is a phthalate that is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

**1.5 Notice of Violation**

On January 26, 2009, Dr. Held served Newell Rubbermaid and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers that children’s vinyl bags such as the Sanford Brands Rubbermaid SpaceMaker #1737358 that Newell Rubbermaid manufactured, distributed and/or sold exposed users in California 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.

**1.6 Complaint**

On August 10, 2009, Dr. Held, acting in the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of San Francisco against Newell Rubbermaid, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl bags such as the Sanford

1 Brands Rubbermaid SpaceMaker #1737358 manufactured, distributed and/or sold by Newell  
2 Rubbermaid.

3 **1.7 No Admission**

4 Newell Rubbermaid denies the material, factual and legal allegations contained in Dr.  
5 Held's Notice and Complaint and maintains that all Covered Products it has manufactured,  
6 distributed and/or sold in California have been and are in compliance with all applicable laws.  
7 Nothing in this Consent Judgment shall be construed as an admission by Newell Rubbermaid of  
8 any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent  
9 Judgment constitute or be construed as an admission by Newell Rubbermaid of any fact, finding,  
10 conclusion, issue of law, or violation of law, such being specifically denied by Newell  
11 Rubbermaid. However, this Section shall not diminish or otherwise affect Newell Rubbermaid's  
12 obligations, responsibilities, and duties under this Consent Judgment.

13 **1.8 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
15 jurisdiction over Newell Rubbermaid as to the allegations contained in the Complaint, that venue  
16 is proper in the County of San Francisco and that this Court has jurisdiction to enter and enforce  
17 the provisions of this Consent Judgment.

18 **1.9 Product Description**

19 The term "Covered Products" means children's vinyl bags marketed as school supplies  
20 manufactured, distributed, and/or sold by Newell Rubbermaid.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
23 Consent Judgment is entered by the court.

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1       **2.       INJUNCTIVE RELIEF: REFORMULATION**

2               **2.1**       Commencing on August 30, 2009, Newell Rubbermaid shall not sell, ship, or offer  
3 to be shipped for sale in California any Covered Product that contains more than 1,000 parts per  
4 million (“ppm”) of DEHP.

5               **2.2**       Defendant may employ any methodology accepted by a federal or state agency for  
6 establishing DEHP content in Covered Products.

7       **3.       MONETARY PAYMENTS**

8               **3.1       Payments Pursuant to Health & Safety Code § 25249.7(b)**

9                       3.1.1       In settlement of all claims related to the Covered Products and Listed  
10 Chemical referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety  
11 Code § 25249.7(b), Newell Rubbermaid shall pay \$16,000.00 in civil penalties.

12                      3.1.2       Civil penalties are to be apportioned in accordance with California Health  
13 & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of  
14 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
15 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Newell  
16 Rubbermaid shall issue two separate checks for the penalty payment: (a) one check made payable  
17 to “Hirst & Chanler LLP in Trust for OEHHA” in the amount of \$12,000.00, representing 75% of  
18 the total penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the  
19 amount of \$4,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued  
20 for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
21 0284486); and (b) Anthony Held, whose information shall be provided five calendar days before  
22 the payment is due.

23                      3.1.3       Payment shall be delivered to Dr. Held’s counsel within 10 days of the  
24 Effective Date, at the following address:

25                               Hirst & Chanler LLP  
26                               Attn: Proposition 65 Controller  
27                               2560 Ninth Street  
28                               Parker Plaza, Suite 214  
                                  Berkeley, CA 94710

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

2             **4.1     Attorney Fees and Costs**

3             Pursuant to the private attorney general doctrine codified at California Code of Civil  
4     Procedure § 1021.5, Newell Rubbermaid shall reimburse Dr. Held and his counsel a total of  
5     \$41,500.00 for fees and costs incurred as a result of investigating, bringing this matter to Newell  
6     Rubbermaid's attention, and litigating and negotiating a settlement in the public interest. Newell  
7     Rubbermaid shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the  
8     check payable to "Hirst & Chanler LLP" and shall be delivered within 10 days of the Effective  
9     Date.

10                     Hirst & Chanler LLP  
11                     Attn: Proposition 65 Controller  
12                     2560 Ninth Street  
                      Parker Plaza, Suite 214  
                      Berkeley, CA 94710

13     **5.     CLAIMS COVERED AND RELEASE**

14             **5.1     Claims Covered**

15             This Consent Judgment is a full, final, and binding resolution between Dr. Held, on behalf  
16     of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,  
17     and the general public, and Newell Rubbermaid, its parents, shareholders, divisions, subdivisions,  
18     subsidiaries, affiliates, partners, sister companies, employees, directors, insurers, and attorneys  
19     and their successors and assigns ("Defendant Releasees"), and all entities to whom they distribute  
20     or sell Covered Products, including but not limited to distributors, wholesalers, customers,  
21     retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"),  
22     of any violation of Proposition 65 or any other statutory or common law claims that have been or  
23     could have been asserted in the Complaint against Newell Rubbermaid, Defendant Releasees, and  
24     Downstream Defendant Releasees (collectively "Releasees"), regarding the presence of, or the  
25     failure to warn about exposure to, the Listed Chemical in Covered Products manufactured,  
26     distributed, or sold by Newell Rubbermaid prior to the Effective Date. Compliance with the  
27     terms of this Consent Judgment by Newell Rubbermaid and Defendant Releasees after the  
28     Effective Date constitutes compliance with Proposition 65 regarding the presence of, and the

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1 failure to warn about exposure to, the Listed Chemical in Covered Products manufactured,  
2 distributed or sold by Newell Rubbermaid after the Effective Date.

3 **5.2 Dr. Held's Release of Newell Rubbermaid, and its Chain of Distribution**

4 5.2.1 In further consideration of the promises and agreements herein contained,  
5 the injunctive relief commitments set forth in Section 2, and for the payments to be made  
6 pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents,  
7 representatives, attorneys, successors, and/or assignees, and the general public, hereby waives  
8 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any  
9 form of legal action and releases all claims, including, without limitation, all actions, and causes  
10 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
13 (collectively "claims"), against Releasees that arise under Proposition 65 or any other statutory or  
14 common law claims that were or could have been asserted in the public interest, as such claims  
15 relate to the Releasees' alleged failure to warn about exposures to the Listed Chemical contained  
16 in the Covered Products.

17 5.2.2 Dr. Held also, in his individual capacity only and not in his representative  
18 capacity, provides a general release herein which shall be effective as a full and final accord and  
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
20 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,  
21 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Dr.  
22 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which  
23 provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
26 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
27 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
28 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
DEBTOR.

1 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives  
2 and relinquishes any and all rights and benefits which he may have under, or which may be  
3 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under  
4 any other state or federal statute or common law principle of similar effect, to the fullest extent  
5 that he may lawfully waive such rights or benefits pertaining to the released matters. In  
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
7 complete release notwithstanding the discovery or existence of any such additional or different  
8 claims or facts arising out of the released matters.

9           5.2.3 The parties further understand and agree that this release shall not extend  
10 upstream to any entities that manufactured the Covered Products or any component parts thereof,  
11 or any distributors or suppliers who sold the Covered Products or any component parts thereof to  
12 Newell Rubbermaid.

13           **5.3 Newell Rubbermaid's Release of Dr. Held**

14           Newell Rubbermaid waives any and all claims against Dr. Held, his attorneys, and other  
15 representatives for any and all actions taken or statements made (or those that could have been  
16 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
17 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
18 matter, and/or with respect to the Covered Products, as of the Effective Date.

19           **6. COURT APPROVAL**

20           6.1 This Consent Judgment is not effective until it is approved and entered by the  
21 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
22 within nine months after it has been fully executed by all parties.

23           6.2 Upon court approval of the Consent Judgment, the Parties waive their respective  
24 rights to a hearing or trial on the allegations of the complaint.

25           **7. GOVERNING LAW**

26           The terms of this Consent Judgment shall be governed by the laws of the State of  
27 California.

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1     **8.     NOTICES**

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

6                     To Newell Rubbermaid:  
7                     Brad Turner  
8                     Group Vice President & General Counsel  
9                     Newell Rubbermaid  
                      3 Glenlake Parkway  
                      Atlanta, GA 30328

10                    With a copy to:  
11                    Jeffrey Margulies, Esq.  
12                    Fulbright & Jaworski, LLP  
13                    555 South Flower Street  
                      41<sup>st</sup> Floor  
                      Los Angeles, CA 90071

14                    To Dr. Held:  
15                    Hirst & Chanler, LLP  
16                    Attn: Proposition 65 Coordinator  
                      2560 Ninth Street, Suite 214  
                      Berkeley, CA 94710

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

19     **9.     COUNTERPARTS, FACSIMILE SIGNATURES**

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

23     **10.    COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

24             Dr. Held agrees to comply with the reporting form requirements referenced in California  
25 Health & Safety Code §25249.7(f).  
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1 **11. ENTIRE AGREEMENT**

2 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.  
5 There are no warranties, representations, or other agreements between the Parties except as  
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
7 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
8 other agreements not specifically contained or referenced herein, oral or otherwise, shall be  
9 deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver,  
10 or termination of this Consent Judgment shall be binding unless executed in writing by the Party  
11 to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be  
12 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,  
13 nor shall such waiver constitute a continuing waiver.

14 **12. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or  
16 (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the  
17 Court.

18 **13. ATTORNEY'S FEES**

19 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
20 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs  
21 unless the unsuccessful Party has acted with substantial justification. For purposes of this  
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
23 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

24 13.2 Except as specifically provided in the above paragraph and in Section 4.1, each  
25 Party shall bear its own costs and attorney's fees in connection with this action.

26 13.3 Nothing in this Section 13 shall preclude a Party from seeking an award of  
27 sanctions pursuant to law.

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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: September 16, 2009

Date: September \_\_, 2009

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

By: \_\_\_\_\_  
Dale L. Matschullat, Senior Vice President  
and General Counsel  
Defendants, Newell Rubbermaid Inc.,  
Sanford L.P. (by Newell Operating  
Company, its General Partner)

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Judge of the Superior Court

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**AGREED TO:**

**AGREED TO:**

Date: September \_\_, 2009

Date: September 16, 2009

By: \_\_\_\_\_  
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: *D. Matschullat*  
Dale L. Matschullat, Senior Vice President  
and General Counsel  
Defendants, Newell Rubbermaid Inc.,  
Sanford L.P. (by Newell Operating  
Company, its General Partner)

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Judge of the Superior Court