

1 Clifford A. Chanler, State Bar No. 135534  
2 David S. Lavine, State Bar No. 166744  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

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

**FILED**

DEC 16 2009

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

*By: J. Dale, Deputy*

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

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

Plaintiff,

v.

RUBIE'S COSTUME COMPANY, INC.,  
and DOES 1 through 150, inclusive,

Defendants.

Case No. CIV093325

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF CONSENT JUDGMENT**

Date: December 10, 2009

Time: 8:30 a.m.

Dept.: B

Judge: Hon. Michael B. Dufficy

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant  
2 RUBIE'S COSTUME COMPANY, 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 [Proposed] Consent Judgment ("Consent Judgment") entered into by the parties, and  
5 following issuance of an order approving this Proposition 65 settlement agreement and entering  
6 the Consent Judgment on December 10, 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**.

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11 **IT IS SO ORDERED.**

12  
13 Dated: DEC 18 2009

14 MICHAEL D. DUFFIN  
15 JUDGE OF THE SUPERIOR COURT  
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# **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, CA 94710  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
5

6 Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 THE CITY AND COUNTY OF MARIN  
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 RUBIES COSTUME COMPANY, INC.; and  
DOES 1-150, inclusive,

17 Defendants.  
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Case No. CIV093325

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code §25249.6

1     **1.     INTRODUCTION**

2             **1.1     Anthony E. Held, Ph.D., P.E., and Rubies Costume Company, Inc.**

3             This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter "Dr. Held") and Rubies Costume Company, Inc. (hereinafter "Rubies Costume  
5 Company"), with Dr. Held and Rubies Costume Company collectively referred to as the "Parties."

6             **1.2     Plaintiff**

7             Dr. 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            Rubies Costume Company employs ten or more persons and is a person in the course of doing  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13 Health & Safety Code §25249.6 *et seq.* ("Proposition 65").

14            **1.4     General Allegations**

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

21            **1.5     Product Description**

22            The products that are covered by this Consent Judgment are defined as follows: children's  
23 costumes and accessories containing the Listed Chemical, including, but not limited to: (1) *Yarn*  
24 *Babies Caribbean Pirate #11739 (#0 82686 11739 5)*. All such items shall be referred to herein as  
25 the "Products."

1           **1.6 Notices of Violation**

2           On January 26, 2009 and June 30, 2009, Dr. Held served Rubies Costume Company and  
3 various public enforcement agencies with a document entitled "60-Day Notice of Violation" that  
4 provided Rubies Costume Company and such public enforcers with notice that alleged that Rubies  
5 Costume Company was in violation of California Health & Safety Code §25249.6 for failing to warn  
6 consumers and customers that the Products, apparel, gloves and toys with vinyl components exposed  
7 users in California to DEHP.

8           **1.7 Complaint**

9           On July 2, 2009, Dr. Held, who was and is acting in the interest of the general public in  
10 California, filed a complaint in the Marin County Superior Court, naming Rubies Costume Company,  
11 Inc. as a defendant and alleging violations of Health & Safety Code §25249.6 by Rubies Costume  
12 Company based on the alleged exposures to DEHP contained in the costumes with vinyl components  
13 manufactured, distributed and/or offered for sale in California by Rubies Costume Company  
14 ("Complaint"). Should no public prosecutor diligently prosecute the new claims during the sixty-day  
15 waiting period of the June 30, 2009 notice, the Complaint shall be deemed amended to include  
16 apparel, gloves and toys with vinyl components including, but not limited to, (1) *Batman Child*  
17 *Gauntlets #8151 (0 82686 08151 1)*; (2) *Inflatable Pumpkin Bean Bag Toss Game #57403 (7 21773*  
18 *57403 0)*; and (3) *Lil' All Stars! Lil' Slugger #11278, (0 82686 11278 9)*.

19           **1.8 No Admission**

20           Rubies Costume Company denies the material, factual, and legal allegations contained in Dr.  
21 Held's Notice and maintains that all products that it has manufactured, distributed and/or sold in  
22 California, including the Products, have been, and are, in compliance with all laws. Nothing in this  
23 Consent Judgment shall be construed as an admission by Rubies Costume Company of any fact,  
24 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute  
25 or be construed as an admission by Rubies Costume Company of any fact, finding, conclusion, issue  
26 of law, or violation of law, such being specifically denied by Rubies Costume Company. However,  
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1 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
2 Rubies Costume Company under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
5 jurisdiction over Rubies Costume Company as to the allegations contained in the Complaint, that  
6 venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the  
7 provisions of this Consent Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 21,  
10 2009.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 **2.1 Reformulation Commitment**

13 After the Effective Date, Rubie's Costume Company shall only ship Products for sale in  
14 California that are Phthalate Free, as set forth below. For purposes of this Settlement Agreement,  
15 "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million  
16 ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency  
17 ("EPA") testing methodologies 3580A and 8270C or any method allowed by the U.S. Consumer  
18 Product Safety Commission to test for the presence of DEHP.

19 **3. MONETARY PAYMENTS**

20 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

21 In settlement of all claims related to the Products and Listed Chemical referred to in the  
22 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Rubies  
23 Costume Company shall pay \$4,000 in civil penalties.

24 Civil penalties are to be apportioned in accordance with California Health & Safety Code §  
25 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health  
26 Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as  
27 provided by California Health & Safety Code §25249.12(d). Rubies Costume Company shall issue  
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1 two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP  
2 in Trust for OEHHA" in the amount of \$3,000, representing 75% of the total penalty; and (b) one  
3 check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$1,000, representing  
4 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA,  
5 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose  
6 information shall be provided five calendar days before the payment is due.

7 Payment shall be delivered to Dr. Held's counsel on or before September 30, 2009, at the  
8 following address:

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

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

13 **4.1 Attorney Fees and Costs.**

14 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
16 issue to be resolved after the material terms of the agreement had been settled. Rubies Costume  
17 Company then expressed a desire to resolve the fee and cost issue shortly after the other settlement  
18 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
19 compensation due to Dr. Held and his counsel under general contract principles and the private  
20 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all  
21 work performed through the mutual execution of this agreement. Rubies Costume Company, on  
22 behalf of itself and those in its chain of distribution, shall reimburse Dr. Held and his counsel a total  
23 of \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Rubies  
24 Costume Company's attention, and litigating and negotiating a settlement in the public interest.  
25 Rubies Costume Company shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and  
26 shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before  
27 September 30, 2009.



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

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Dr. Held's Release of Rubies Costume Company**

8 In further consideration of the promises and agreements herein contained, and for the  
9 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and  
10 current agents, representatives, attorneys, successors and/of assignees, and in the interest of the  
11 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
12 legal action and releases all claims, including, without limitation, all actions, and causes of action, in  
13 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
14 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
15 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
16 Rubies Costume Company and each of its downstream distributors, wholesalers, licensors, licensees,  
17 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
18 corporate affiliates, subsidiaries (including, but not limited to, Forum Novelties, Inc.), and their  
19 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and  
20 sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise  
21 under Proposition 65, as such claims relate to Rubies Costume Company's alleged failure to warn  
22 about exposures to or identification of DEHP contained in the Products.

23 In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents,  
24 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity  
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
26 and releases all Claims against Rubie's Costume Company and each of its Releasees. This additional  
27 release, which Dr. Held is providing in his individual capacity, is limited to those Claims that arise  
28 with respect to Proposition 65, as such Claims relate to Rubie's Costume Company's alleged failure

1 to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in  
2 any products sold by Rubie's Costume Company.

3 **5.2 Rubies Costume Company Release of Dr. Held**

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

9 **6. COURT APPROVAL**

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

16 **7. SEVERABILITY**

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

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California  
22 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is  
23 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Rubies  
24 Costume Company provide written notice to Dr. Held of any asserted change in the law, and shall  
25 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
26 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Rubies  
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1 Costume Company from any obligation to comply with any pertinent state or federal toxics control  
2 laws.

3 **9. NOTICES**

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

8 For Rubies Costume Company:

9 Marc Beige, President  
10 Rubie's Costume Company, Inc.  
11 1 Ruby Plaza  
12 Richmond Hill, NY 11418

13 With Copies to:

14 Frederick Locker  
15 Locker Greenberg & Brainin PC  
16 Attorneys At Law  
17 420 Fifth Avenue  
18 New York NY 10018

19 For Dr. Held:

20 Proposition 65 Coordinator  
21 Hirst & Chanler, LLP  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710

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

27 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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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 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Rubies Costume Company 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. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

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.

1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

**AGREED TO:**

6 Date: September 21, 2009

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Marc Beige, President  
RUBIES COSTUME COMPANY, INC.

10  
11 **IT IS SO ORDERED.**

12  
13 Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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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 hereof.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 9/22/09

By: \_\_\_\_\_  
ANTHONY E. HELD, Ph.D., P.E.

By: Marc Beige  
Marc Beige, President  
RUBIES COSTUME COMPANY, INC.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT