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

**FILED**

AUG - 2 2010

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Main, Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION  
15

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

17 Plaintiff,

18 v.

19 RUBIES COSTUME COMPANY, INC.,  
20 TARGET CORPORATION; and DOES 1  
21 through 150,

22 Defendants.

Case No. CIV 093325

<sup>KAM</sup>  
**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF CONSENT JUDGMENT  
AS TO DEFENDANT TARGET  
CORPORATION**

Date: August 2, 2010

Time: 8:30 a.m.

Dept.: E

Judge: Hon. James R. Ritchie

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant  
2 TARGET CORPORATION, having agreed through their respective counsel that judgment be  
3 entered pursuant to the terms of the Proposition 65 settlement agreement in the form of the  
4 attached *Consent Judgment as to Defendant Target Corporation [Proposed]* (“Consent  
5 Judgment”) entered into by the parties, and following issuance of an order approving this  
6 Proposition 65 settlement agreement and entering the Consent Judgment on August 2, 2010

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: AUG - 2 2010

**JAMES R. RITCHIE**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



**EXHIBIT 1**



1       **1. INTRODUCTION**

2           **1.1 Anthony E. Held, Ph.D., P.E., and Target Corporation.** This Consent  
3 Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. ("Dr. Held" or  
4 "Plaintiff") and defendant Target Corporation ("Target" or "Defendant"), with Dr. Held and  
5 Target collectively referred to as the "Parties."

6           **1.2 Plaintiff.** Dr. Held is an individual residing in the State of California who  
7 seeks to promote awareness of exposure to toxic chemicals and improve human health by  
8 reducing or eliminating hazardous substances contained in consumer products.

9           **1.3 Defendant.** Target employs ten or more persons and is a person in the course  
10 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
11 California Health & Safety Code §25249.5 et seq. ("Proposition 65").

12           **1.4 General Allegations.** Dr. Held alleges that Target has manufactured,  
13 distributed and/or sold certain children's products containing di(2-ethylhexyl)phthalate  
14 ("DEHP") for use in the State of California without the requisite health hazard warnings.  
15 DEHP is known to cause birth defects and other reproductive harm, and is listed pursuant to  
16 Proposition 65.

17           **1.5 Notices of Violation.**

18           **1.5.1** On March 13, 2009, Dr. Held served Target and various public  
19 enforcement agencies with a document entitled "60-Day Notice of Violation" that  
20 alleged that Target violated Proposition 65 by failing to warn consumers that "bath  
21 books containing [DEHP]; vinyl keychains containing [DEHP]; vinyl magnets  
22 containing [DEHP]; children's costumes containing [DEHP]; and "children's toys with  
23 vinyl components containing [DEHP]", including "*Baby Love Bath Book; Party Like  
24 Crazy! Flip Flop Key Chains; Mini Back to School Kit; Toddler Costume Pony; and  
25 Wonderworld Rolling Butterfly Soft Toy,*" exposed users in California to DEHP.

26           **1.5.2** On June 30, 2009, Dr. Held served Target and various public  
27 enforcement agencies with a document entitled "60-Day Notice of Violation" that  
28 alleged that Target violated Proposition 65 by failing to warn consumers that "children's

1 gloves with vinyl components containing [DEHP]", including "Batman Child Gauntlets,"  
2 exposed users in California to DEHP.

3 1.6 **First Amended Complaint.** On October 19, 2009, Dr. Held filed a first  
4 amended complaint ("FAC") alleging that Target violated California Health & Safety Code  
5 §25249.6 based on the alleged exposure to DEHP from bath books, vinyl keychains, vinyl  
6 magnets, children's costumes, and children's toys.

7 1.7 **No Admission.** The Parties enter into this Consent Judgment as a full and  
8 final settlement of all claims that were raised in the FAC or that could have been raised in the  
9 FAC, arising out of the facts or conduct alleged therein as to Covered Products as defined in  
10 Section 2.1. By execution of this Consent Judgment and agreeing to comply with its terms,  
11 Target does not admit any facts or conclusions of law, including, but not limited to, any facts or  
12 conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other  
13 statutory, common law or equitable requirements relating to DEHP in Covered Products.  
14 Nothing in this Consent Judgment shall be construed as an admission by Target of any fact,  
15 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent  
16 Judgment constitute or be construed as an admission by Target of any fact, conclusion of law,  
17 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or  
18 impair any right, remedy, argument or defense Target may have in this or any other or future  
19 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is  
20 accepted by Target for purposes of settling, compromising, and resolving issues disputed in this  
21 action.

22 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the  
23 Parties stipulate that this Court has jurisdiction over Target as to the allegations contained in the  
24 FAC, that venue is proper in the County of Marin, and that this Court has jurisdiction to enter  
25 and enforce the provisions of this Consent Judgment.

26 **2. Definitions.**

27 2.1 "Covered Products" means the following products: "Mini Back to School  
28 Kit" (Target DPCI 081161006, UPC 490811 610060); "Party Like Crazy Flip Flop Key

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1 Chains" (Target DPCI 053030503, UPC 490530 305032); "Toddler Costume Pony" (Target  
2 DPCI 240113893, UPC 492401 138930); "Wonderworld Rolling Butterfly" (Target DPCI  
3 242076014, UPC 8851285230208); and "Baby Love Bath Books" (Target DPCI 234040975,  
4 UPCs 84176903005, 84176903006).

5 2.2 "Effective Date" means the date this Consent Judgment is approved by the  
6 Court.

7 **3. INJUNCTIVE RELIEF: REFORMULATION**

8 3.1 Commencing on the Effective Date, Target shall not sell or offer for sale in  
9 California any Covered Product containing DEHP in concentrations exceeding 0.1 percent  
10 (1,000 parts per million ("ppm")).

11 **4. ENFORCEMENT OF CONSENT JUDGMENT**

12 4.1 The terms of this Consent Judgment shall be enforced exclusively by the  
13 Parties hereto. The Parties may, by motion or application for an order to show cause before the  
14 Superior Court of the County of Marin, enforce the terms and conditions contained in this  
15 Consent Judgment. A Party may file such a motion or application only after that Party first  
16 provides 30 days notice to the Party allegedly failing to comply with the terms and conditions  
17 of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and  
18 good faith manner.

19 **5. MONETARY PAYMENTS**

20 5.1 **Payments Made Pursuant to Health & Safety Code §25249.7(b).** In  
21 settlement of all claims relating to Covered Products referred to in this Consent Judgment,  
22 Target shall pay \$22,500 to be apportioned in accordance with California Health & Safety Code  
23 §25192, with 75% of these funds remitted to the State of California's Office of Environmental  
24 Health Hazard Assessment ("OEHHA") and the remaining 25% of the amount remitted to  
25 Anthony Held as provided by California Health & Safety Code §25249.12(d). Target shall  
26 issue two separate checks for the payment: (a) one check made payable to "Chanler Law Group  
27 LLP in trust for OEHHA" in the amount of \$16,875, representing 75% of the total payment;  
28 and (b) one check to "Chanler Law Group LLP in trust for Anthony Held" in the amount of

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1 \$5625, representing 25% of the total payment. Two separate 1099s shall be issued for the  
2 above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and  
3 (b) Anthony Held, whose information shall be provided five calendar days before the payment  
4 is due.

5 Payment shall be delivered to Dr. Held's counsel within five days of the Effective Date,  
6 at the following address:

7 Chanler Law Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street, Suite 214  
10 Berkeley, CA 94710

11 5.2 Reimbursement of Fees and Costs. Pursuant to Code of Civil Procedure  
12 (CCP) §1021.5, Target shall reimburse Dr. Held and his counsel a total of \$37,500 for fees and  
13 costs incurred as a result of investigating, bringing this matter to Target's attention, and  
14 litigating and negotiating and obtaining court approval of a settlement in the public interest.  
15 Target shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the  
16 check payable to "Chanler Law Group LLP" and to be delivered within five days of the  
17 Effective Date, to the following address:

18 Chanler Law Group  
19 Attn: Proposition 65 Controller  
20 2560 Ninth Street, Suite 214  
21 Berkeley, CA 94710

22 **6. CLAIMS COVERED AND RELEASE**

23 6.1 This Consent Judgment is a full, final, and binding resolution between Dr.  
24 Held and Target and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
25 affiliates, sister companies and their successors and assigns ("Defendant Releasees") of any  
26 violation of Proposition 65 that has been or could have been asserted in the public interest  
27 against Target and Defendant Releasees regarding the failure to warn about exposure to DEHP  
28 arising in connection with Covered Products manufactured, sourced, or distributed by Target.

6.2 Dr. Held on behalf of himself, his past and current agents, representatives,  
attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
all rights to institute or participate in, directly or indirectly, any form of legal action and

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1 releases all claims, including, without limitation, all actions, and causes of action, in law or in  
2 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or  
3 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of  
4 any nature whatsoever, whether known or unknown, fixed or contingent (collectively  
5 "Claims"), against Target and Defendant Releasees arising from any violation of Proposition 65  
6 regarding the failure to warn about exposure to DEHP from Covered Products manufactured,  
7 sourced, or distributed by Target. Dr. Held on behalf of himself, his past and current agents,  
8 representatives, attorneys, successors, and/or assignees, but *not* in his representative capacity  
9 hereby waives all Claims against Target and Defendant Releasees arising from any violation of  
10 Proposition 65 or that were or could have been asserted regarding the alleged failure to warn  
11 about exposure to other phthalates listed under Proposition 65, including but not limited to  
12 butyl benzyl phthalate ("BBP"), di-n-butyl phthalate ("DBP"), di-n-hexyl phthalate ("DnHP"),  
13 or di-isodecyl phthalate ("DIDP") in the Covered Products.

14           6.3       The provisions of Sections 6.1 and 6.2 shall not extend to any entities that  
15 manufactured the Covered Products or any component parts thereof, or to any distributors or  
16 suppliers who sold the Covered Products or any component parts thereof to Target, unless such  
17 entity is a Defendant Releasee.

18           6.4       **Defendant's Release of Dr. Held.** Target and Defendant Releasees waive  
19 any and all claims against Dr. Held, his attorneys, and other representatives for any and all  
20 actions taken or statements made (or those that could have been taken or made) by Dr. Held and  
21 his attorneys and other representatives, whether in the course of investigating claims or  
22 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with  
23 respect to the Covered Products.

## 24   7.    **COURT APPROVAL**

25           7.1       By this Consent Judgment and upon its approval, the Parties waive their right  
26 to trial on the merits, and waive rights to seek appellate review of any and all interim rulings,  
27 including all pleading, procedural, and discovery orders.

28

1           7.2       Plaintiff shall file a motion seeking approval of this Consent Judgment  
2 pursuant to California Health & Safety Code §25249.7(f), which Target shall not oppose.

3           7.3       If this Consent Judgment is not approved by the Court, (a) this Consent  
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
5 and become null and void, and the action shall revert to the status that existed prior to the  
6 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
7 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
8 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
9 purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer  
10 to determine whether to modify the terms of the Consent Judgment and to resubmit it for  
11 approval.

12       **8.       ATTORNEYS' FEES**

13           8.1       A Party who unsuccessfully brings or contests an action arising out of this  
14 Consent Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and  
15 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this  
16 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
17 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

18           8.2       Except as specifically provided in Section 5.2 and 8.1, each Party shall bear its  
19 own costs and attorney's fees in connection with this action.

20           8.3       Nothing in this Section 8 shall preclude a Party from seeking an award of  
21 sanctions pursuant to law.

22       **9.       GOVERNING LAW**

23           9.1       The terms of this Consent Judgment shall be governed by the laws of the State  
24 of California, and shall apply only to Covered Products offered for sale in the State of  
25 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
26 reason of law generally, or as to the Covered Products, then Target may provide written notice  
27 to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to  
28

1 this Consent Judgment with respect to, and to the extent that, the Covered Products are so  
2 affected.

3           9.2       The Parties, including their counsel, have participated in the preparation of  
4 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
5 This Consent Judgment was subject to revision and modification by the Parties and has been  
6 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
7 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
8 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
9 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are  
10 to be resolved against the drafting Party should not be employed in the interpretation of this  
11 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12 **10. NOTICES**

13           10.1       Unless specified herein, all correspondence and notices required to be  
14 provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent  
15 by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier  
16 on any Party by the other Party at the following addresses:

17           To Target:

18                     Jeffrey B. Margulies, Esq.  
19                     FULBRIGHT & JAWORSKI LLP  
20                     555 South Flower Street  
                      41st Floor  
                      Los Angeles, California 90071

21           With a copy to:

22                     Tim Baer, General Counsel  
23                     Target Corporation  
                      1000 Nicollet Mall  
                      TPS-3255  
24                     Minneapolis, Minnesota 55403

25           To Dr. Held:

26                     Proposition 65 Coordinator  
27                     CHANLER LAW GROUP  
                      2560 Ninth Street  
                      Parker Plaza, Suite 214  
28                     Berkeley, CA 94710-2565

1           10.2     Any Party, from time to time, may specify in writing to the other Party a  
2 change of address to which all notices and other communications shall be sent.

3 **11.    MODIFICATION**

4           11.1     **Modification.** This Consent Judgment may be modified by written agreement  
5 of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any  
6 Party and entry of a modified Consent Judgment by the court.

7           11.2     **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or  
8 regulation is adopted that addresses the DEHP content of Covered Products sold in California,  
9 any Party shall be entitled to request that the Court modify the reformulation standard of  
10 Section 3.1 of this Consent Judgment for good cause shown.

11          11.3     **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
12 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
13 motion to modify the Consent Judgment.

14 **12.    ENTIRE AGREEMENT**

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

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**13. RETENTION OF JURISDICTION**

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

**14. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**15. AUTHORIZATION**

15.1 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.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <b>APPROVED</b> By Tony Held at 6:39 pm, Mar 15, 2010	Date: <b>3/15/2010</b>
By: <i>Anthony E. Held</i> Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	By: <i>[Signature]</i> Defendant, TARGET CORPORATION

**IT IS SO ORDERED.**

Date: \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT