

FILED

SEP 19 2012

**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy**

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 DELORME PUBLISHING COMPANY, INC.;
19 RODCO ENTERPRISES; *et al.*,

20 Defendants.

) Case No.: CIV-1106114

) ~~PROPOSED~~ JUDGMENT PURSUANT
) TO TERMS OF PROPOSITION 65
) SETTLEMENT AND CONSENT
) JUDGMENT

) Date: September 19, 2012

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendants DeLorme
2 Publishing Company, Inc. and Rodco Enterprises, having agreed that a judgment be entered pursuant
3 to the terms of the Consent Judgment entered into by the parties, and following the issuance of an
4 order approving this Proposition 65 settlement agreement on September 19, 2012:

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
6 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance
7 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,
8 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

9 **IT IS SO ORDERED.**

10
11 Dated: SEP 19 2012

ROY O. CHERNUS

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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Josh Voorhees, State Bar No. 241436
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Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

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

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

v.

DELORME PUBLISHING COMPANY,
INC.; RODCO ENTERPRISES; and DOES 1-
150, inclusive,
Defendants.

) Case No. CIV-1106114
)
) **[PROPOSED] CONSENT**
) **JUDGMENT**
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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., Rodco Enterprises, and Delorme Publishing**
3 **Company, Inc.**

4 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
5 P.E. (“Held” or “Plaintiff”) on the one hand and defendants Rodco Enterprises (“Rodco”) and
6 Delorme Publishing Company, Inc. (“Delorme”) on the other hand, with Rodco and Delorme
7 collectively referred to as “Defendants” and with Plaintiff and Defendants collectively referred to
8 as the “Parties.”

9 **1.2 Anthony E. Held, Ph.D., P.E.**

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

13 **1.3 Rodco Enterprises and Delorme Publishing Company, Inc.**

14 Rodco and Delorme each employ ten or more persons and each are a person in the course
15 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 Held alleges that the Defendants have manufactured, imported, distributed, sold and/or
19 offered for sale pouches, including map holders, containing di(2-ethylhexyl)phthalate (“DEHP”)
20 for use in the State of California without the requisite Proposition 65 health hazard warnings.
21 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
22 birth defects and other reproductive harm.

23 **1.5 Product Description**

24 The products that are covered by this Consent Judgment are defined as pouches, including
25 map holders, containing DEHP, that are manufactured, imported, distributed, sold and/or offered
26 for sale in California by Defendants including, but not limited to, *DeLorme Clear Map Holder,*
27 *AB-000045-000 (#0 19916 99997)*, (hereinafter the “Products”).
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1.6 Notice of Violation

On September 1, 2011, Held served Defendants and various public enforcement agencies, with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of alleged violations of California Health & Safety Code § 25249.6 based on the Defendants’ alleged failure to warn consumers that the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and prosecuted an action against the alleged violations set forth in the Notice.

1.7 Complaint

On December 15, 2011, Held filed a complaint in the Superior Court in and for the County of Marin against Rodco Enterprises, Delorme Publishing Company, Inc. and others, *Held v. DeLorme Publishing Company et al.*, Case No. CIV-1106114 (“Complaint” or “Action”) alleging violations of California Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in the Products.

1.8 No Admission

This Consent Judgment resolves claims that are denied and disputed by Defendants. The Parties enter into this Consent Judgment pursuant to a full and final settlement of claims between the Parties for the purpose of avoiding prolonged litigation. Defendants each deny the material, factual and legal allegations contained in Held’s Notice and Complaint and maintain that all products that each has sold, manufactured, imported, and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Defendants. However, this section shall not diminish or otherwise affect the Defendants’ obligations, responsibilities, and duties under this Consent Judgment.

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1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment only, the term "Effective Date" shall mean July 13, 2012.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

For purposes of this Consent Judgment only, Reformulated Products are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Defendants shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

3. MONETARY PAYMENTS

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

In settlement of the claims covered by this Consent Judgment, Defendants have collectively been assessed civil penalties in the amount of \$9,000. Due to their commitment to reformulate the Products pursuant to Section 2.1 above, Defendants have collectively received a credit of \$6,000. Therefore, Rodco and Delorme shall collectively make a payment of \$3,000 to be apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of California's Office of Environmental

1 Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty monies
2 earmarked for Held. Rodco and Delorme shall each be independently and individually
3 responsible to Plaintiff for 50% of the payment required under this Section 3.1, and neither is
4 obligated nor liable under the terms of this Consent Judgment for the other’s required payment
5 under this Section 3.1.

6 **3.2 Reimbursement of Held’s Fees and Costs**

7 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this
9 fee issue to be resolved after the material terms of the agreement had been settled. Rodco and
10 Delorme then expressed a desire to resolve the fee and cost issue shortly after the other
11 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
12 the compensation due to Held and his counsel under general contract principles and the private
13 attorney general doctrine, for all work performed in this matter, except fees that may be incurred
14 on appeal. Under these legal principles, Defendants shall collectively pay the amount of
15 \$18,000 for fees and costs incurred prior to the execution of this Consent Judgment including
16 investigating, noticing, and litigating this matter and for future fees and costs, including
17 attorney’s fees, to be incurred in seeking judicial approval of this Consent Judgment including,
18 but not limited to, preparing and filing the approval papers, complying with Proposition 65
19 reporting requirements, and preparing for and attending any and all hearings related to the
20 approval of this Consent Judgment. Rodco and Delorme shall each be independently and
21 individually responsible for 50% of the payment to Plaintiff required under this Section 3.2, and
22 neither is obligated under the terms of this Consent Judgment for the other’s required payment
23 under this Section 3.2.

24 **3.3 Payment Procedures**

25 **3.3.1** The payments Rodco and Delorme are individually required to make under
26 Sections 3.1 and 3.2 above shall be delivered on or before July 13, 2012, and shall be held in trust
27 until the Court approves the Consent Judgment. Defendants have the option of depositing the
28 required payments into their attorneys’ trust accounts or into The Chanler Group’s trust account.

1 If directed to the latter, the settlement funds shall be made payable by checks, as follows:

- 2 (a) "The Chanler Group in Trust for OEHHA" in an amount equal to
- 3 75% of the civil penalty;
- 4 (b) "The Chanler Group in Trust for Anthony E. Held" in an amount
- 5 equal to 25% of the penalty; and
- 6 (c) "The Chanler Group in Trust" in the amounts required for
- 7 attorneys fees and costs.

8 If directed to the former, Defendants' counsel shall confirm in writing on or before July
9 13, 2012, that the funds have been deposited in their trust account, and within 5 days after receipt
10 of notice that the Consent Judgment has been approved, checks made out in the same manner
11 as (a) – (c) shall be delivered to The Chanler Group by certified mail or by overnight courier
12 service.

13 **3.3.2** After the Consent Judgment has been approved, Defendants shall issue a
14 1099 form to each of the following entities:

- 15 (a) Office of Environmental Health Hazard Assessment, P.O. Box
- 16 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil
- 17 penalties payable to OEHHA;
- 18 (b) Anthony E. Held, whose address and tax identification number
- 19 shall be furnished upon request, for the civil penalties payable to
- 20 Anthony E. Held; and
- 21 (c) The Chanler Group (EIN: 94-3171522) for the associated amounts
- 22 to be paid to each pursuant to the respective amounts Rodco and
- 23 Delorme are each individually required to pay under Sections 3.1
- 24 and 3.2 above.

25 **3.3.3** If the Court does not approve the Consent Judgment, all funds tendered
26 into any trust account shall be refunded in full consistent with Section 5 below.

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1 3.3.4 All payments transmitted to the Chanler Group shall be delivered to the
2 following address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Held's Public Release of Proposition 65 Claims**

10 Held acting on his own behalf and in the public interest releases Defendants, their parents,
11 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
12 attorneys, and each entity to whom Defendants directly or indirectly distribute or sell Products,
13 including but not limited to downstream distributors, wholesalers, customers, retailers,
14 franchisees, cooperative members, licensors, and licensees ("Releasees") from all claims for
15 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
16 Products as set forth in the Notice. The Parties further understand and agree that, except as
17 provided for above, this release shall not extend upstream to any third parties that manufactured
18 the Products or any component parts thereof, or any distributors or suppliers who sold the
19 Products or any component parts thereof to Defendants. Defendants' Compliance with the terms
20 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
21 DEHP from the Products as set forth in the Notice and the Action.

22 **4.2 Held's Individual Release of Claims**

23 Held, also on behalf of himself, his past and current agents, representatives, attorneys,
24 successors, and/or assignees and *not* in his representative capacity, provides a general release
25 herein which shall be effective as a full and final accord and satisfaction, as a bar to all Claims,
26 liabilities and demands of any nature, character or kind, known or unknown, suspected or
27 unsuspected, as such claims relate to DEHP in the Products sold by Defendant Releasees in
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1 California. Held further acknowledges that he is familiar with Civil Code § 1542, which provides
2 as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
5 TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
6 THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
7 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
8 DEBTOR.

9 Held, in his individual capacity only and *not* in his representative capacity, and on behalf of
10 himself, his past and current agents, representatives, attorneys, successors, and/or assignees
11 expressly waives and relinquishes any and all rights and benefits which he may have under, or
12 which may be conferred on him by the provisions of Civil Code § 1542 of the California as well
13 as under any other state or federal statute or common law principle of similar effect, to the fullest
14 extent that he may lawfully waive such rights or benefits pertaining to the released matters.

15 The Parties further understand and agree that, except as provided for above, this release
16 shall not extend upstream to any third parties that manufactured the Products or any component
17 parts thereof, or any distributors or suppliers who sold the Products or any component parts
18 thereof to Defendants.

19 **4.3 Defendants' Release of Held**

20 Defendants on behalf of themselves, their past and current agents, representatives,
21 attorneys, successors, and/or assignees, hereby waive any and all claims against Held, his
22 attorneys and other representatives, for any and all actions taken or statements made (or those that
23 could have been taken or made) by Held and his attorneys and other representatives, whether in
24 the course of investigating claims or otherwise seeking to enforce Proposition 65 against them in
25 this matter with respect to DEHP in the Products.

26 Defendants also provide a general release herein which shall be effective as a full and
27 **final accord and satisfaction**, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys' fees, damages, losses, claims, liabilities and demands of Defendants of any nature,
character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter

1 of the Action alleging DEHP in the Products. Defendants acknowledge that they are familiar
2 with Civil Code § 1542, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
5 TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
6 THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
7 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
8 DEBTOR.

9 Defendants expressly waive and relinquish any and all rights and benefits which they may
10 have under, or which may be conferred on them by, the provisions of Civil Code § 1542 as well
11 as under any other state or federal statute or common law principle of similar effect, to the fullest
12 extent that it may lawfully waive such rights or benefits pertaining to the released matters.

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one
16 year after it has been fully executed by all Parties. If this Consent Judgment is not entered by the
17 Court, upon 15 days written notice, the Plaintiff and/or the law firm holding a Defendant's
18 settlement funds in trust shall refund any and all payments made into its trust account by that
19 Defendant as requested.

20 **6. SEVERABILITY**

21 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
22 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
23 provisions remaining shall not be adversely affected. In the event either Defendant fails to make
24 the required 50% payment(s) identified in Sections 3.1 or 3.2, and the other Defendant makes its
25 50% payments in a timely manner, the Defendant making such payments shall be deemed in full
26 compliance with Sections 3.1 and 3.2 of this Consent Judgment regardless of whether the
27 outstanding 50% payments are made by the other Defendant. In no event shall either Defendant
28 be liable for or in breach of this Consent Judgment for any failure by the other Defendant to make
its required payments under Sections 3.1 and 3.2.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed,
4 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
5 provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of
6 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
7 Products, then Rodco and Delorme shall provide written notice to Held of any asserted change in
8 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
9 to the extent that, the Products are so affected.

10 **8. NOTICES**

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

15 To Rodco Enterprises:
16 Cordon T. Baesel, Esq.
17 McKenna Long & Aldridge LLP
18 600 West Broadway
19 Suite 2600
20 San Diego, CA 92101-3372

 To Held:
 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

 To Delorme Publishing, Inc.:
19 J. Robert Maxwell, Esq.
20 Rogers Joseph O'Donnell
21 311 California Street
 10th Floor
 San Francisco, CA 94104

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties 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. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall draft and file. If any third party objection to the noticed motion is filed, the Parties shall work together to respond to any such objection and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. 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.

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13. AUTHORIZATION

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

AGREED TO:

Date: July 2, 2012

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

AGREED TO:

RODCO ENTERPRISES, INC

Date: _____

By: _____
Lionel Rodrigue
Its: President

AGREED TO:

**DELORME PUBLISHING COMPANY,
INC.**

Date: _____

By: _____

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13. AUTHORIZATION

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

AGREED TO:

Date: _____

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

AGREED TO:

RODCO ENTERPRISES, INC

Date: July 12, 2012

By: Lionel Rodriguez
Lionel Rodriguez
Its: President

PMA.

AGREED TO:

DELORME PUBLISHING COMPANY, INC.

Date: _____

By: _____

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13. AUTHORIZATION

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

AGREED TO:

Date: _____

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

AGREED TO:

RODCO ENTERPRISES, INC

Date: _____

By: _____
Lionel Rodrigue
Its: President

AGREED TO:

**DELORME PUBLISHING COMPANY,
INC.**

Date: 7.11.12

By: *[Signature]*