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Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

FILED
SEP 12 2014 P 2 33
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: CLERK
D. WEBER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

MECHANICAL SERVANTS, INC.; *et al.*,

Defendants.

Case No.: MSC14-00869

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: September 12, 2014
Time: 3:00 PM
Dept.: 34
Judge: Hon. George V. Spanos

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In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant Mechanical Servants, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on October 20, 2014:

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

IT IS SO ORDERED.

Dated: 10-20-2014

GEORGE V. SPANOS

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
MECHANICAL SERVANTS, INC.; *et al.*,
Defendants.

Case No. CM14-00869
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held") and Mechanical Servants, Inc. ("Mechanical"), with Held and Mechanical each individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

Mechanical employs ten 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, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.4 General Allegations

Held alleges that Mechanical manufactures, imports, sells, or distributes for sale in California, tools with vinyl and/or PVC grips containing di(2-ethylhexyl)phthalate ("DEHP") without first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.5 Product Description

The Mechanical products that are covered by this Consent Judgment are defined as tools with vinyl/PVC grips containing DEHP including, but not limited to, *Convenience Valet 6" Slip Joint Plier, UPC #0 94187 03054 7*, which are manufactured, imported, distributed, sold and/or offered for sale by Mechanical in the State of California, hereinafter the "Products."

1.6 Notice of Violation

On or about August 16, 2013, Held served Mechanical and certain requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice") alleging that Mechanical was in

1 violation of Proposition 65 for failing to warn its customers and consumers in California that the
2 Products expose users to DEHP.

3 **1.7 Complaint**

4 On May 2, 2014 Held filed the instant action ("Complaint"), naming Mechanical as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Mechanical denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has sold and distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Mechanical's obligations, responsibilities, and duties
15 under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Mechanical as to the allegations in the Complaint, that venue is proper in the County
19 of Contra Costa, and that this Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date which the
23 Court approves this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Mechanical shall only
27 purchase for sale, manufacture for sale, import, sell, or distribute for sale in California "Reformulated
28

1 Products," or Products that are sold with a clear and reasonable warning pursuant to Section 2.2
2 below. For purposes of this Consent Judgment, Reformulated Products are products that contain
3 DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
4 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in
6 a solid substance. In addition to the EPA test methods authorized above, the Parties may utilize
7 equivalent methodologies employed by state or federal agencies to determine DEHP content in a
8 solid substance.

9 **2.2 Interim Warnings**

10 Commencing on June 30, 2014, Mechanical shall provide clear and reasonable warnings for
11 all Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have
12 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
13 placed with such conspicuousness as compared with other words, statements, designs, or devices as
14 to render it likely to be read and understood by an ordinary individual under customary conditions
15 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
16 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
17 confusion. The parties understand that Mechanical has instituted a warning program such that all
18 products contain the following warning: "This product contains chemicals known to the state of
19 California to cause cancer, or birth defects or other reproductive harm." Mechanical may continue to
20 use the aforementioned warning on all packaging already designed and in production. Mechanical
21 shall not produce new packaging designs that contain warnings unless such warnings comply with
22 subsections 2.3(a) and (b) below. Mechanical agrees to ensure all Products that contain a warning
23 are compliant with subsections 2.3(a) and (b) by December 31, 2014.

24 **(a) Retail Store Sales.**

25 **(i) Product Labeling.** Mechanical shall affix a warning to the packaging,
26 labeling, or directly on each Product provided for sale in retail outlets in California that states:

27 WARNING: This product contains chemicals
28 known to the State of California to cause cancer,
birth defects and other reproductive harm.

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(ii) **Point-of-Sale Warnings.** Alternatively, Mechanical may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Mechanical's customers shall be sent by certified mail, return receipt requested.

WARNING: This product contains chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain chemicals known to the State of California to cause cancer, birth defects and other reproductive harm:
[list products for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that Mechanical sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Mechanical shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 Alternatively, the designated symbol may appear adjacent to or immediately following the
2 display, description, or price of the Product for which a warning is being given, provided that the
3 following warning statement also appears elsewhere on the same web page, as follows:

4 WARNING: This product contains chemicals
5 known to the State of California to cause cancer,
6 birth defects and other reproductive harm.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
10 to in this Consent Judgment, Mechanical shall pay \$10,500 in civil penalties. Each civil penalty
11 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
12 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
13 Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held.

14 **3.1.1 Initial Civil Penalty**

15 On or before the date this Consent Judgment is approved, Mechanical shall issue a
16 check for its initial civil penalty payment in the amount of \$4,000 to "Greenberg Traurig, LLP."
17 Greenberg Traurig, LLP shall provide The Chanler Group with written confirmation within five days
18 of receipt that the funds have been deposited in a trust account. Within one week of the date that this
19 Consent Judgment is approved by the Court, Greenberg Traurig, LLP shall issue two separate checks
20 for the initial civil penalty payment to "OEHHA" and "Anthony E. Held, Ph.D., P.E., Client Trust
21 Account."

22 **3.1.2 Final Civil Penalty**

23 On or before December 1, 2014, Mechanical shall make a final civil penalty payment
24 of \$6,500. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the
25 final civil penalty payment shall be waived in its entirety if, no later than July 15, 2014, an officer of
26 Mechanical provides Held with written certification that all of the Products purchased for sale or
27 manufactured for sale in California as of the date of such certification are Reformulated Products as
28 defined by Section 2.1, and that Mechanical will continue to offer only Reformulated Products in

1 California in the future. The option to certify reformulation in lieu of making the final civil penalty
2 payment required by this Section is a material term and time is of the essence.

3 **3.2 Reimbursement of Fees and Costs**

4 The parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
6 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
7 other settlement terms had been finalized, Mechanical expressed a desire to resolve Held's fees and
8 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
9 his counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
11 execution of this Consent Judgment. Mechanical shall, on or before the date this Consent Judgment
12 is approved, issue a check payable to "Greenberg Traurig, LLP" in the amount of fees and costs of
13 \$29,500 to be held in trust by Greenberg Traurig, LLP for The Chanler Group. Greenberg Traurig,
14 LLP shall provide The Chanler Group with written confirmation within five days of receipt that the
15 funds have been deposited in a trust account. Within one week of the date this Consent Judgment is
16 approved by the Court, Greenberg Traurig, LLP shall issue a check payable to "The Chanler Group"
17 to the address found in Section 3.3.1 below.

18 **3.3 Payment Procedures**

19 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
20 this Consent Judgment are to be delivered within five days of the Effective Date according to the
21 following subsections.

22 **3.3.1 Payment Addresses**

23 (a) All payments and tax documentation for Held and his counsel shall be
24 delivered to:

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

1 (b) All payments and tax documentation for OEHHA shall be delivered to
2 OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
3 appropriate:
4

5 For United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery or Courier:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street
16 Sacramento, CA 95812-4010

17 **3.3.2 Proof of Payment to OEHHA**

18 Mechanical shall provide Held's counsel with a copy of the checks sent to OEHHA
19 enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Held's Public Release of Proposition 65 Claims**

22 Held, acting on his own behalf and in the public interest, releases Mechanical and its
23 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
24 and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
25 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
26 franchisers, cooperative members, licensors, and licensees ("Downstream Releasees") for violations
27 arising under Proposition 65 for unwarned exposures to DEHP from the Products sold by
28 Mechanical prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP
from the Products sold by Mechanical before the Effective Date.

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4.2 Held's Individual Release of Claims

Held, in his individual capacity only and *not* in his representative capacity, also provides a release to Mechanical, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP from the Products sold or distributed for sale by Mechanical before the Effective Date.

4.3 Mechanical's Release of Held

Mechanical, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements made by Held and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties.

6. SEVERABILITY

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Mechanical may provide written notice to Held of any asserted change in the law, and shall have no further

1 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
2 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Mechanical from any
3 obligation to comply with any pertinent state or federal toxics control laws.

4 **8. NOTICE**

5 Unless specified herein, all correspondence and notice required by this Consent Judgment
6 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
7 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

8 For Mechanical:

9 David Baum, President
10 Mechanical Servants, Inc.
11 2755 West Thomas Street
12 Melrose Park, IL 60160

12 with a copy to:

13 Anthony J. Cortez, Esq.
14 Greenberg Traurig, LLP
15 1201 K Street, Suite 1100
16 Sacramento, CA 95814

17 For Held:

18 The Chanler Group
19 Attn: Proposition 65 Coordinator
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code

1 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
2 furtherance of obtaining such approval, Held and Mechanical agree to mutually employ their best
3 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
4 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
5 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
6 and supporting the motion for judicial approval.

7 **11. MODIFICATION**

8 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
9 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
10 Party, and the entry of a modified consent judgment by the Court.

11 **12. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: June 6, 2014

Date: 5/29/14

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

By: 
David Baum, President
Mechanical Servants