

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Josh Voorhees, State Bar No. 241436
Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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

FILED

JUN 28 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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

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

Plaintiff,

v.

ANSELL HEALTHCARE PRODUCTS, LLC,
et al.,

Defendants.

Case No. CIV1503719

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

Date: JUN 28 2016
Time: 1:30 p.m.
Dept. L
Judge: Hon. Geoffrey M. Howard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Ansell Healthcare Products, LLC, 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 their Proposition 65 settlement and Consent Judgment, and for good cause being shown,

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

IT IS SO ORDERED.

Dated: JUN 28 2016

GEOFFREY M. HOWARD

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Josh Voorhees, State Bar No. 241436
Warren M. Klein, State Bar No. 303958
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5 E-mail: Warren@Chanler.com

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7
8
9

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

15 ANTHONY E. HELD, PH.D., P.E.,
16 Plaintiff,
17 v.
18 ANSELL HEALTHCARE PRODUCTS, LLC;
19 *et al.*,
20 Defendants.
21

Case No. CIV1503719
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held")
4 and Ansell Healthcare Products, LLC ("Ansell"), with Held and Ansell each individually referred to
5 as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Ansell employs ten or more persons and is a "person in the course of doing business" for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Settling Defendants manufacture, import, sell, or distribute for sale in
16 California, vinyl/PVC gloves containing diisononyl phthalate ("DINP"), without first providing the
17 exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 Ansell's products that are covered by this Consent Judgment are defined as vinyl/PVC gloves
21 containing DINP including, without limitation, the *Ansell Vinyl-Touch Vinyl Disposable Exam*
22 *Gloves, Item No. 15-0191, UPC #0 71483 15019 3*, which are manufactured, imported, distributed,
23 sold and/or offered for sale by Ansell in the State of California, hereinafter the "Products."

24 **1.6 Notice of Violation**

25 On January 30, 2015, Held served Ansell and certain requisite public enforcement agencies
26 with a "60-Day Notice of Violation" ("Notice") alleging that Ansell violated Proposition 65 when
27
28

1 they failed to warn their customers and consumers in California that vinyl/PVC gloves expose users
2 to DINP.

3 **1.7 Complaint**

4 On October 13, 2015, Held filed the instant action (“Complaint”), naming Ansell as defendant
5 for its alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Settling Defendants as to the allegations in the Complaint, that venue is proper in the
18 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure Section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date which the
22 Court approves this Consent Judgment.

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

24 **2.1 Reformulated Products**

25 Commencing on September 1, 2016, and continuing thereafter, Ansell shall only purchase for
26 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products.”
27 For purposes of this Consent Judgment, “Reformulated Products” are products that contain DINP in
28

1 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
2 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
3 methodology utilized by federal or state agencies for the purpose of determining the DINP content in
4 a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
8 to in this Consent Judgment, Ansell shall pay \$19,400 in civil penalties. Each civil penalty payment
9 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
10 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
11 Assessment ("OEHHA") and twenty-five percent (25%) of the funds allocated to Held.

12 **3.1.1 Initial Civil Penalty**

13 Within five (5) days of the Effective Date, Ansell shall issue a check for its initial civil
14 penalty payment in the amount of \$3,400 to "Anthony E. Held, Ph.D., P.E., Client Trust Account."
15 Held and his counsel subsequently will direct 75% of the initial civil penalty to OEHHA.

16 **3.1.2 Final Civil Penalty: Accelerated Reformulation**

17 On or before July 30, 2016, Ansell shall make a final civil penalty payment of
18 \$16,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the
19 final civil penalty payment shall be waived in its entirety if, no later than July 1, 2016, an officer of
20 Ansell provides Held with written certification that all of the Products purchased for sale or
21 manufactured for sale in California as of the date of such certification are Reformulated Products as
22 defined by Section 2.1, and that Ansell will continue to offer only Reformulated Products in
23 California in the future. The option to certify reformulation in lieu of making the final civil penalty
24 payment required by this Section is a material term and time is of the essence. In the event that
25 Ansell does not timely certify its compliance or make the final civil penalty payment required by this
26 section, the Parties agree that Held may file a motion or application seeking an order compelling
27 Ansell's compliance with this section. If successful, the Parties further agree that Held shall be
28

1 entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and Code of
2 Civil Procedure Section 1021.5.

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, Ansell expressed a desire to resolve Held's fees and costs.
8 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
9 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. Within five (5) days of the Effective Date, Ansell shall issue a
12 check payable to "The Chanler Group" to the address found in Section 3.3.1 below in the amount of
13 fees and costs of \$25,000.

14 **3.3 Payment Procedures**

15 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
16 this Consent Judgment are to be sent to The Chanler Group and Held within five (5) days of the
17 Effective Date according to the following subsections.

18 **3.3.1 Payment Address**

19 All payments and tax documentation for OEHHHA, Held, and his counsel shall be
20 delivered to:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Held's Public Release of Proposition 65 Claims**

28 Held, acting on his own behalf and in the public interest, releases Ansell and its parents,
subsidiaries, affiliated entities under common ownership, directors, officers, employees, and

1 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
2 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
3 franchisers, cooperative members, licensors, and licensees ("Downstream Releasees") for violations
4 arising under Proposition 65 for unwarned exposures to DINP from the Products sold by Ansell
5 prior to the Effective Date, as set forth in the Notice.

6 **4.2 Held's Individual Release of Claims**

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

13 **4.3 Ansell's Release of Held**

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

19 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

27

28

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
4 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ansell may
5 provide written notice to Held of any asserted change in the law, and shall have no further obligations
6 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
7 Nothing in this Consent Judgment shall be interpreted to relieve Ansell from any obligation to
8 comply with any pertinent state or federal toxics control laws.

9 **8. NOTICE**

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

13 For Ansell:

14 Adam Thurston, Esq.
15 Drinker Biddle & Reath, LLP
16 1800 Century Park East, Ste. 1500
17 Los Angeles, CA 90067

18 For Held:

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

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

2 Held agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, Held and Ansell agree to mutually employ their best efforts,
6 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
7 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
8 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and
9 supporting the motion for judicial approval.

10 **11. MODIFICATION**

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

14 **12. AUTHORIZATION**

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

17 **AGREED TO:**

AGREED TO:

18 Date: 5/30/2016

Date: MAY 2, 2016

19 By: Anthony E. Held
20 ANTHONY E. HELD, PH.D., P.E.

21 By: [Signature]
22 ANSELL HEALTHCARE PRODUCTS, LLC

23
24
25
26
27
28