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

**FILED**

AUG 30 2017

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
11

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

13 Plaintiff,

14 v.

15 THE PROCTER & GAMBLE COMPANY; *et*  
16 *al.*,

17 Defendants

Case No. CIV-1701429

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

Date: August 30, 2017

Time: 1:30 p.m.

Dept.: B

Judge: Hon. Roy O. Chernus

1 In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E., and defendant The Procter  
2 & Gamble Company, having agreed through their respective counsel that Judgment be entered  
3 pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment  
4 (“Consent Judgment”), and following this Court’s issuance of an Order approving this Proposition 65  
5 settlement and Consent Judgment,

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

11  
12 **IT IS SO ORDERED.**

13  
14 Dated:           AUG 30 2017          

13 **ROY CHERNOVA**  
14 \_\_\_\_\_  
15 JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**

1 Josh Voorhees, State Bar No. 241436  
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11 Attorneys for Plaintiff  
12 ANTHONY E. HELD, PH.D., P.E.

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

16 ANTHONY E. HELD, PH.D., P.E., ) Case No. CIV 1701429  
17 Plaintiff, )  
18 v. ) **[PROPOSED] CONSENT JUDGMENT**  
19 THE PROCTER & GAMBLE COMPANY; *et* )  
*al.*, )  
20 Defendants. ) Action Filed:  
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29 WHEREAS Anthony E. Held, Ph.D., P.E. ("Dr. Held") has issued a Notice and filed a  
30 Complaint against The Procter & Gamble Company regarding the presence of benzophenone in  
31 Covered Products, as further described in this Consent Judgment; and

32 WHEREAS the Parties acknowledge that the Notice to The Procter & Gamble Company  
33 was intended to cover all of defendant's Covered Products; and

34 WHEREAS the Parties have discussed the claims accordingly, including the formal and  
35 informal exchange of scientific information regarding and risk assessments of benzophenone  
36 relevant to a wider range of products; and

1           WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding  
2 benzophenone in The Procter & Gamble Company's and its subsidiaries' (collectively, "P&G")  
3 Covered Products, they hereby agree as follows:

4       **1.     INTRODUCTION**

5           **1.1    Parties**

6           This consent judgment ("Consent Judgment") is entered into by and between plaintiff Dr.  
7 Held and P&G with Dr. Held and P&G collectively referred to as the "Parties" and individually as a  
8 "Party."

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

10          Dr. 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 hazardous  
12 substances contained in consumer and commercial products.

13          **1.3    The Procter & Gamble Company and Benzophenone**

14          P&G manufactures, and/or distributes, and/or sells products that are labeled as having a Sun  
15 Protection Factor Value<sup>1</sup> ("SPF Products"), including products that have as their primary function to  
16 serve as sunscreens. One ingredient used in such products to enhance their ability to provide  
17 protection from the sun is octocrylene, an active ingredient approved for use in sunscreens by the  
18 Federal Food & Drug Administration ("FDA").<sup>2</sup> Octocrylene can at times contain benzophenone.  
19 Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic  
20 Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as  
21 "Proposition 65") as a chemical "known to the state to cause cancer" as Proposition 65 defines that  
22 phrase. 27 Cal. Code Reg. § 25000.

23          **1.4    Products Covered**

24          This Consent Judgment covers and applies to all SPF Products, including but not limited to  
25 sunscreen and cream or moisturizers labeled as having a SPF, that are manufactured and/or  
26 distributed for sale in California and/or sold in California by P&G. All sizes, types, brands,  
27

28 <sup>1</sup> This term as used herein is defined at 21 C.F.R. § 352.3.

<sup>2</sup> See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 packaging, formulations, delivery forms (e.g., sprays or lotions applied by hand), intended uses  
2 (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic purposes) are included, but not  
3 limited to, *Olay Total Effects 7 in One Tone Correcting Moisturizer with Sunscreen Broad*  
4 *Spectrum SPF 15 Light to Medium (Octocrylene 3%), #92373012, UPC #0 75609 19034 6*  
5 (“Covered Products”). The Parties agree that the Notice to P&G covers all of P&G’s Covered  
6 Products. This Consent Judgment, and all of its terms, applies to all Covered Products, including  
7 without limitation new products and brands introduced, developed, or acquired in the future by  
8 P&G which would today meet the definition of Covered Products if they currently were being  
9 manufactured or distributed for sale, or being sold, in California. The term Covered Product, as  
10 used hereafter in this Consent Judgment, includes such future products and brands.

11 **1.5 General Allegations**

12 Dr. Held alleges in the Complaint that P&G manufactured, and/or distributed for sale in  
13 California, and/or sold in California, Covered Products containing benzophenone without “a clear  
14 and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr. Held  
15 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future  
16 and to settle Dr. Held’s alleged claims.

17 **1.6 Notice of Violation**

18 On April 27, 2016, Dr. Held served P&G and the requisite public enforcement agencies with  
19 a 60-Day Notice of Violation (“Notice”), alleging that P&G was in violation of Proposition 65 for  
20 failing to warn consumers in California that its Sunscreens exposed users to benzophenone. To the  
21 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the  
22 allegations set forth in any of the Notice.

23 **1.7 Complaint**

24 On April 24, 2017, Dr. Held filed a complaint in the Superior Court in and for the County of  
25 Alameda against The Procter & Gamble Company and DOES 1-150, alleging violations of  
26 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in  
27 certain sunscreens sold by P&G in the State of California, *Held v. The Procter & Gamble Company,*  
28 *et al.*, Case No.: CIV 1701429 (the “Complaint”).

1           **1.8    No Admission**

2           P&G denies all the respective material, factual, and legal allegations contained in the Notice  
3 and Complaint. P&G maintains that all of its Covered Products have been and are in compliance  
4 with all laws. Nothing in this Consent Judgment shall be construed as an admission against interest  
5 by P&G of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with  
6 this Consent Judgment constitute or be construed as an admission against interest by P&G of any  
7 fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish  
8 or otherwise affect P&G's obligations, responsibilities, and duties under this Consent Judgment.

9           **1.9    Consent to Jurisdiction**

10          For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
11 jurisdiction over P&G as to the allegations in the Complaint, that venue is proper in the County of  
12 Alameda, P&G agrees that it employs or has employed ten or more persons during time periods  
13 relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce  
14 the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure  
15 § 664.6.

16          **1.10   Effective Date**

17          For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that  
18 this Consent Judgment is approved and entered by the Court, including any unopposed tentative  
19 ruling.

20          **2.    INJUNCTIVE RELIEF: REFORMULATION**

21               **2.1    Reformulation Standards**

22               (a) On and after the Effective Date, P&G shall only manufacture or cause to be  
23 manufactured, for sale in California, SPF Products that qualify as "Reformulated Covered  
24 Products." For purposes of this Consent Judgment, "Reformulated Covered Products" are Covered  
25 Products that either (i) contain no more than 20 parts per million ("ppm") benzophenone in the  
26 finished Products, or (ii) contain no more than 200 ppm of benzophenone in the ingredient  
27 octocrylene used in the finished Products ("Reformulation Standards"). It is understood and agreed  
28 by the Parties that P&G is currently sourcing octocrylene (the chemical that in turn contains

1 benzophenone) with no more than 20 ppm benzophenone in the finished Products or 200 ppm of  
2 benzophenone in the ingredient octocrylene used in the finished Products, thereby meeting the  
3 Reformulation Standards above and shall continue to do so to the extent reasonably possible.  
4 However, due to existing reformulation standards reached by Dr. Held with other manufacturers of  
5 SPF products, Reformulated Covered Products may either (i) contain no more than 35 ppm  
6 benzophenone in the finished Products, or (ii) contain no more than 350 ppm of benzophenone in  
7 the ingredient octocrylene used in the finished Products ("35/350 Standard"). By complying with  
8 the 35/350 Standard, P&G will continue to be in compliance with the Reformulation Standards and  
9 with this Consent Judgment. No violation of this Consent Judgment can be deemed to occur by  
10 virtue of compliance with the 35/350 Standard. Further, in the event that Dr. Held is a party to a  
11 future court-approved consent judgment that establishes reformulation standards for benzophenone  
12 in sunscreen, that are greater than the Reformulation Standards above, P&G shall have the option,  
13 upon providing notice to Dr. Held, of complying with the revised benzophenone reformulation  
14 standards.

15 (b) P&G, in complying with the Reformulation Standards may, at its option, either (i) test  
16 the Reformulated Covered Product pursuant to a scientifically appropriate application of U.S.  
17 Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically  
18 appropriate methodology for determining the benzophenone or (ii) may use the appropriate  
19 mathematical calculation based on octocrylene percentage in the Reformulated Covered Product  
20 and the benzophenone concentration in the lot of octocrylene used in the Reformulated Covered  
21 Product, based either on testing of the octocrylene lot or on a certificate of analysis ("Certificate of  
22 Analysis") documenting benzophenone content from the octocrylene supplier at the option of P&G.

### 23 **3. MONETARY PAYMENTS**

24 **3.1 Civil Penalty Payments** Pursuant to Health and Safety Code Section 25249.7(b)(2),  
25 and in settlement of all claims alleged in the Notice or referred to in this Consent Judgment, P&G  
26 agrees to pay \$17,000 in civil penalties. The penalty payment will be allocated in accordance with  
27 California Health and Safety Code Section 25249.12(c)(1) & (d), with 75% of the penalty amount  
28 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Dr.



1 Held. Dr. Held's counsel shall be responsible for remitting P&G's penalty payment under this  
2 Consent Judgment to OEHHA. P&G shall issue two checks in the amount of \$4,250 written to  
3 "Anthony E. Held, Client Trust Account," and a check in the amount of \$12,750 to "OEHHA,"  
4 within ten 10 days of the Effective Date sent to the address provided in Section 3.3 below.

### 5 **3.2 Reimbursement of Attorneys' Fees and Costs**

6 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
8 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the  
9 other settlement terms had been finalized, P&G expressed a desire to resolve Dr. Held's fees and  
10 costs. The Parties then negotiated a resolution of the compensation due to Dr. Held and his counsel  
11 under general contract principles and the private attorney general doctrine codified at California  
12 Code of Civil Procedure Section 1021.5. Within ten (10) days of the Effective Date, P&G shall  
13 issue a check to "The Chanler Group" in the amount of \$31,500, and shall deliver it to the address  
14 listed in Section 3.3 below. The check shall cover all fees and costs incurred by Dr. Held  
15 investigating, bringing this matter to P&G's attention, and negotiating a settlement of the matter.

### 16 **3.3 Payment Address**

17 All payments required by this Consent Judgment shall be delivered to the following address:

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

## 21 **4. CLAIMS COVERED AND RELEASED**

### 22 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final and binding resolution of all claims that were or could  
24 have been asserted in the Complaint arising out of P&G's alleged failure to provide Proposition 65  
25 warnings for exposures to benzophenone in their respective Covered Products. Dr. Held, acting on  
26 his own behalf and in the public interest, releases P&G and its respective parents, subsidiaries,  
27 affiliated entities under (full or partial) common ownership, manufacturers, suppliers and the  
28 directors, officers, employees, attorneys, and predecessors, successors or assigns of each of them

1 ("Releasees") and each entity to whom P&G directly or indirectly distributes or sells the Covered  
2 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,  
3 franchisers, cooperative members, licensors and licensees, and including any and all subsidiaries,  
4 parents, marketplace retailers and/or affiliates of the foregoing retailers including but not limited to  
5 Ulta (collectively, the "Distribution Chain Releasees") for violations arising under Proposition 65  
6 for unwarned exposures to benzophenone from the Covered Products sold by P&G prior to the  
7 Effective Date. Dr. Held's release of claims applies to all Covered Products which P&G either  
8 manufactured, and/or distributed and/or sold prior to the Effective Date, regardless of the date any  
9 person distributes or sells the subject Covered Products.

10 Upon entry of this Consent Judgment by the Court, going forward, P&G's compliance with  
11 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65  
12 with respect to benzophenone in P&G's prior, current and future Covered Products.

#### 13 4.2 Dr. Held's Individual Release of Claims

14 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides  
15 a release to P&G, Releasees, and Distribution Chain Releasees, which release shall be effective as a  
16 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
17 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr. Held of any  
18 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of  
19 alleged or actual exposures to benzophenone in P&G's Covered Products prior to the Effective  
20 Date.

#### 21 4.3 The Procter & Gamble Company's Release of Dr. Held

22 P&G, on behalf of itself, its past and current agents, representatives, attorneys, successors  
23 and assignees, hereby waives any and all claims against Dr. Held and his attorneys and other  
24 representatives, for any and all actions taken or statements made by Dr. Held and his attorneys and  
25 other representatives, whether in the course of investigating claims, otherwise seeking to enforce  
26 Proposition 65 against it in this matter, or with respect to the Covered Products up through the  
27 Effective Date.

### 28 5. COURT APPROVAL

1 This Consent Judgment is not effective until it is approved and entered by the Court and  
2 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
3 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in  
4 writing.

5 **6. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
7 Judgment is held by a court to be void or unenforceable, or any Parties agree to modify any terms  
8 due to input from the Office of the Attorney General or after a hearing before the Court in  
9 connection with Dr. Held's Motion to Approve, or for other good cause, each Party to be bound by  
10 any such modified terms must re-execute the modified Consent Judgment and such modified  
11 Consent Judgment then shall be presented to the Court for approval by Dr. Held; provided,  
12 however, that if a provision of this Consent Judgment declared void or unenforceable is material to  
13 the Party for whom such term provided a benefit or protection, that Party can seek other remedies,  
14 including, without limitation, rescission or reformation, based on the provision being declared void  
15 or unenforceable.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California  
18 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
19 rendered inapplicable by reason of law generally, or as to the Covered Products, including without  
20 limitation the delisting of benzophenone, then P&G may provide written notice to Dr. Held of any  
21 asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further  
22 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered  
23 Products are so affected. None of the terms of this Consent Judgment shall have any application to  
24 Covered Products sold outside of the State of California.

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notice required to be provided pursuant to  
27 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class registered  
28 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other at the

1 following addresses:

2 To P&G:

3 Elizabeth V. McNulty, Esq.  
4 TAYLOR ANDERSON LLP  
5 19100 Von Karman Ave Suite 820  
Irvine, CA 92612

To Anthony E. Held, Ph.D., P.E.:

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

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

8 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
10 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
11 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

13 Dr. Held agrees to comply with the reporting form requirements referenced in California  
14 Health & Safety Code § 25249.7(f).

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),  
17 Dr. Held is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.  
18 P&G agrees to urge the Court to approve this Consent Judgment. If any third party objection to the  
19 noticed motion is filed, Dr. Held and P&G agree to work together to the extent appropriate, and  
20 shall appear at any hearing before the Court to urge the Court to approve the Consent Judgment.

21 **12. MODIFICATION**

22 This Consent Judgment may only be modified by a written instrument executed by the Party  
23 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion  
24 to modify shall be served on all Parties and the Office of the Attorney General.

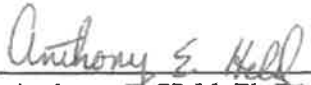
25 **13. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment on behalf of their  
27 respective Parties and have read, understood and agree to all of the terms and conditions of this  
28 Consent Judgment.

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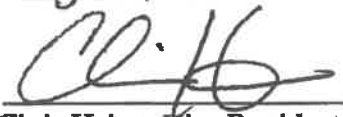
AGREED TO:

Date: 6/25/2017

By:   
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: July 3, 2017

By:   
Chris Heiert, Vice President–Skin Care,  
North America; Brand Franchise Leader,  
Olay; and Global Commercial Leader,  
Facial Moisturizers and Treatments