

1 Laralei S. Paras, State Bar No. 203319
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118
8 aralei@chanler.com

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

FILED

NOV -9 2018

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

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

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

Plaintiff,

v.

AMERICAN HEALTHCARE PRODUCTS,
INC.; *et al.*,

Defendants.

Case No. CIV-1800829

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

Date: November 9, 2018
Time: 1:30 p.m.
Dept.: E
Judge: Hon. Paul M. Haakenson

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In the above entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and Defendant American Healthcare Products, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] consent judgment (Consent Judgment), and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, Judgment is hereby 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 terms of the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

PAUL M. HAAKENSON

Dated: NOV - 9 2018

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Christopher F. Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

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

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

15 ANTHONY E. HELD, PH.D., P.E.,
16 Plaintiff,
17
18 v.
19 AMERICAN HEALTHCARE
20 PRODUCTS, INC.; *et al*,
21 Defendant.
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Case No. CIV-1800829

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

7 Dr. Held is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Dr. Held alleges that AHP is a person in the course of doing business for purposes of the
12 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code
13 section 25249.5 *et seq.* (Proposition 65) at some, if not most, relevant periods covering this dispute.

14 **1.4 General Allegations**

15 Dr. Held alleges that AHP manufactures, imports, sells and distributes for sale in California
16 products containing di(2-ethylhexyl)phthalate (DEHP), and that it did so (and may still do so)
17 without providing the health hazard warning that Dr. Held alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl or PVC gloves containing
20 DEHP including, but not limited to, *Flex Vinyl -- Powder Free; Vinyl Powder Free; Uniseal Flex*
21 *Vinyl; Uniseal Vinyl; UniSeal Vinyl Lightly Powdered Premium Synthetic Exam Gloves, #016-5,*
22 *UPC #7 44514 00165 7, and UniSeal Vinyl Powder-Free Premium Synthetic Exam Gloves, #017-7,*
23 *UPC #7 44514 00177 0* that have been offered for sale in California by AHP (Products).

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1 **1.6 Notices of Violation**

2 On March 30, 2017, and on March 21, 2018, Dr. Held served AHP and the requisite public
3 enforcement agencies with a 60-Day Notice of Violation and a Supplemental 60-Day Notice of
4 Violation respectively (the “Notices”), alleging that AHP violated Proposition 65 when it failed to
5 warn its customers and consumers in California that the Products expose users to DEHP. To the
6 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an
7 action to enforce the allegations set forth in the Notices.

8 **1.7 Complaints**

9 On March 12, 2018, Dr. Held commenced the instant action, naming AHP as one of the
10 defendants for the alleged violations of Proposition 65 that are the subject of the Notices. On April
11 27, 2018, Dr. Held filed an amended complaint.

12 **1.8 No Admission**

13 AHP denies the material, factual, and legal allegations contained in the Notices and
14 Complaints, and maintains that all of the products that it has sold or distributed for sale in
15 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
16 Consent Judgment shall be construed as an admission by AHP of any fact, finding, conclusion of
17 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
18 be construed as an admission by AHP of any fact, finding, conclusion of law, issue of law, or
19 violation of law. This Section shall not, however, diminish or otherwise affect AHP’s obligations,
20 responsibilities, and duties under this Consent Judgment.

21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over AHP as to the allegations contained in the Complaints, that venue is proper in the
24 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
3 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
4 including any unopposed tentative ruling.

5 **2. INJUNCTIVE TERMS: REFORMULATION OR APPROPRIATE P65 WARNINGS**

6 **2.1 Commitment to Reformulate or Warn**

7 Commencing on the Effective Date and continuing thereafter, AHP agrees to only
8 manufacture, import, distribute, sell or offer for sale in California, Products that are either (a)
9 Reformulated Products as defined by Section 2.2, below, or (b) Products that bear a clear and
10 reasonable health hazard warning pursuant to Section 2.3 below.

11 **2.2 Reformulation Standards**

12 "Reformulated Products" are Products containing DEHP in concentrations of less than 0.1
13 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
14 accredited by the State of California, a federal agency, or a nationally recognized accrediting
15 organization. For purposes of compliance with this reformulation standard, testing samples shall be
16 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-
17 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology
18 8270D, or other methodologies utilized by federal or state government agencies to determine
19 phthalate content in a solid substance.

20 **2.3 Clear and Reasonable Warnings**

21 Commencing on the Effective Date and continuing thereafter, for any Products sold or
22 distributed for sale in California by AHP that are not Reformulated Products, AHP agrees to only
23 sell or distribute such Products for sale in California with a clear and reasonable warning in
24 accordance with this Section. AHP further agrees that any warning used will be prominently placed
25 in relation to the Products with such conspicuousness when compared with other words, statements,
26 designs, or devices as to render it likely to be read and understood by an ordinary individual under
27 customary conditions of purchase or use. For purposes of this Consent Judgment, a warning
28

1 satisfying the above criteria that is affixed directly to a Product or its accompanying labeling or
2 packaging containing the following statement shall be deemed clear and reasonable:

3
4 **⚠WARNING:** This product can expose you to chemicals
5 including DEHP, which is known to the
6 State of California to cause birth defects
7 or other reproductive harm. For more
8 information go to www.P65Warnings.ca.gov.

9
10 **3. MONETARY TERMS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
13 referred to in the Notice, Complaint, and this Consent Judgment, AHP shall pay \$2,000 in civil
14 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
15 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
16 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
17 (25%) of the penalty retained by Held. Held's counsel shall be responsible for delivering
18 OEHHA's portion of any penalty payment(s) made under this Consent Judgment. AHP shall
19 provide its payment in a check made payable to "Anthony E. Held, Client Trust Account" in the
20 amount of \$500 and a check made payable to "OEHHA" in the amount of \$1,500 to be delivered to
21 the address provided in Section 3.3, below.

22 **3.2 Reimbursement of Attorney's Fees and Costs**

23 The parties acknowledge that Held and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
25 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
27 his counsel under general contract principles and the private attorney general doctrine codified at
28 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
on appeal, if any. Under these legal principles, AHP shall pay \$18,500 for all fees and costs

1 incurred by Held investigating, bringing this matter to AHP's attention, litigating and negotiating a
2 settlement in the public interest. AHP's payment shall be delivered to the address in Section 3.4 in
3 a check payable to "The Chanler Group."

4 **3.3 Payment Timing; Payments Held in Trust**

5 All payments due under this Consent Judgment shall be held in trust until such time as the
6 Court approves the Parties' settlement. Within five (5) days of the date that this Consent Judgment
7 is fully executed by the Parties, all payments due under this agreement shall be delivered to AHP's
8 counsel and held in trust until the Effective Date. AHP's counsel shall provide Held's counsel
9 with written confirmation upon its receipt of the settlement payments. Within five days of the
10 Effective Date, AHP's counsel shall deliver the civil penalty and attorneys' fee reimbursement
11 payments to Held's counsel.

12 **3.4 Payment Address**

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

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Dr. Held's Release of Proposition 65 Claims**

22 Dr. Held, acting on his own behalf and in the public interest, releases AHP and its parents,
23 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
24 attorneys (Releasees) and each entity to whom AHP 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 any
27 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products prior to
28 the Effective Date.

1 **4.2 Dr. Held's Individual Release of Claims**

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

9 **4.3 AHP's Release of Dr. Held**

10 AHP, on its own behalf and on behalf of its past and current agents, representatives,
11 attorneys, successors and/or assignees, hereby waives any and all claims against Dr. Held and his
12 attorneys and other representatives, for any and all actions taken or statements made (or those that
13 could have been taken or made) by Dr. Held and his attorneys and other representatives in the
14 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
15 respect to the Products.

16 **4.4 Mutual Waiver of California Civil Code Section 1542**

17 The Parties each acknowledge that they are familiar with Section 1542 of the Civil Code,
18 which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
20 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
21 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

22 The Parties, each on their own behalf, and on behalf of their past and current agents,
23 representatives, attorneys, successors, and/or assignees, (but not in Held's representative capacity)
24 expressly waive and relinquish any and all rights and benefits which they may have under, or which
25 may be conferred upon them by the provisions of Civil Code section 1542 as well as under any
26 other state or federal statute or common law principle of similar effect, to the fullest extent they
27 may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined
28 by Sections 4.1 through 4.3, above.

1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
4 after it has been fully executed by all Parties. Dr. Held and AHP agree to support the entry of this
5 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
6 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
7 noticed motion is required for judicial approval of this Consent Judgment, which motion Dr. Held
8 shall draft and file and AHP shall support, appearing at the hearing if so requested. If any third-
9 party objection to the motion is filed, Dr. Held and AHP agree to work together to file a reply and
10 appear at any hearing. This provision is a material component of the Consent Judgment and shall
11 be treated as such in the event of a breach.

12 **6. SEVERABILITY**

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

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, preempted, or
19 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then AHP may
20 provide Dr. Held with written notice of any asserted change in the law, and shall have no further
21 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
22 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve AHP from its
23 obligation to comply with any pertinent state or federal law or regulation.

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1 **8. NOTICE**

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

6	To AHP:	To Dr. Held:
7	John H. Woo, Esq.	Attn: Proposition 65 Coordinator
8	Woo Law, APC	The Chanler Group
9	225 S. Lake Ave., Suite 300	2560 Ninth Street
10	Pasadena, CA 91101	Parker Plaza, Suite 214
		Berkeley, CA 94710-2565

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

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Dr. Held and his counsel agree to comply with the reporting form requirements referenced
19 in California Health and Safety Code section 25249.7(f).

20 **11. MODIFICATION**

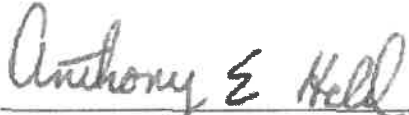
21 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
22 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
23 any party and the entry of a modified Consent Judgment by the Court thereon.

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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 
8 _____
9 ANTHONY E. HELD, PH.D., P.E.

10 Dated: 8/31/18

AGREED TO:


_____
AMERICAN HEALTHCARE PRODUCTS, INC.

By: TONY DJIE
(Print Name)

Its: PRESIDENT
(Title)

Dated: 08/29/18

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