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

FILED
San Francisco County Superior Court

MAR 07 2019

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

LITTLE EARTH PRODUCTIONS, INC.;
RITE AID CORPORATION; *et al.*,

Defendants.

Case No. CGC-18-568395

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

Date: March 7, 2019
Time: 9:30 a.m.
Dept.: 302
Judge: ~~Hon. Harold E. Kahn~~

Reservation No.: 01160307-04
ETHAN P. SCHULMAN

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In the above-entitled action, Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Little Earth Productions, 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 this Proposition 65 settlement and Consent Judgment,

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: March 7, 2019


JUDGE OF THE SUPERIOR COURT

ETHAN P. SCHULMAN

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
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2 THE CHANLER GROUP
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Attorneys for Plaintiff
7 ANTHONY E. HELD, PH.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
LITTLE EARTH PRODUCTIONS, INC.;
RITE AID CORPORATION; *et al.*,
Defendants.

Case No. CGC-18-568395
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., P.E.
4 ("Held") and defendant Little Earth Productions, Inc. ("Little Earth"), with Held and Little Earth
5 each referred to individually as a "Party" and, collectively, as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Little Earth 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, California Health and
13 Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Held alleges that Little Earth manufactures, imports, distributes, sells or offers for sale in
16 California tote bags with handles containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so
17 without providing the health hazard warning that Held alleges is required by Proposition 65. DEHP
18 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth
19 defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are tote bags with handles containing DEHP,
22 including, but not limited to, the *NBA Golden State Warriors Burlap Market Tote, #751111-WARR,*
23 *UPC #8 86699 66045 1* (hereinafter, "Products") that are manufactured, imported, distributed, sold
24 and/or offered for sale in California by Little Earth.

25 **1.6 Notice of Violation**

26 On December 13, 2017, Held served Little Earth and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (the Notice), alleging that Little Earth violated
28 Proposition 65 when it failed to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 25, 2018, Held commenced the instant action (Complaint), naming Little Earth as
5 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 Little Earth 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 or 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, nor shall compliance with this Consent Judgment constitute or be
11 construed as, an admission by Little Earth of any fact, finding, conclusion of law, issue of law, or
12 violation of law. This section shall not, however, diminish or otherwise affect Little Earth's
13 obligations, responsibilities, and duties under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Little Earth as to the allegations contained in the Complaint, that venue is proper in
17 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
18 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
21 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

22 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

23 **2.1 Commitment to Reformulate or Provide Warnings**

24 Commencing on the Effective Date and continuing thereafter, Little Earth shall only
25 manufacture, purchase, import, sell or distribute for sale, in the State of California, Products that are
26 either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products that are labeled
27 with a clear and reasonable warning as set forth under Sections 2.3 through 2.6.

28

1 **2.2 Reformulation Standard Defined**

2 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
3 containing DEHP in a maximum concentration of less than 0.1 percent (1,000 parts per million) in
4 each accessible component (i.e. any component that may be touched during a reasonably foreseeable
5 use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a
6 nationally recognized accrediting organization. For purposes of compliance with this reformulation
7 standard, testing samples shall be prepared and extracted using Consumer Product Safety
8 Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental
9 Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state
10 government agencies to determine phthalate content in a solid substance.

11 **2.3 Clear and Reasonable Warnings**

12 Commencing on or before the Effective Date and continuing thereafter, Little Earth shall
13 provide clear and reasonable warnings, as set forth in this Section and in accordance with Title 27,
14 California Code of Regulations § 25600 *et seq.*, for all Products manufactured, imported, sold, or
15 otherwise distributed or provided for sale to customers in California that are not Reformulated
16 Products. Each warning shall be prominently placed with such conspicuousness as compared with
17 other words, statements, designs, or devices as to render it likely to be read and understood by an
18 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
19 provided in a manner such that it is clearly associated with the *specific* Product to which the warning
20 applies, so as to minimize the risk of consumer confusion.

21 **(a) Warning.** The warning shall consist of the following statement:

22 **⚠ WARNING:** This product can expose you to DEHP, which is
23 known to the State of California to cause cancer and
24 birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov.

25 **(b) Short-Form Warning.** If placed directly on the Product or its labeling, Little
26 Earth may, at its option, utilize the following short-form warning, provided it appears in a type size
27 no smaller than the largest type size used for other consumer information on the Product's label, and
28

1 in no case smaller than six-point type, subject to the additional requirements in Sections 2.5 and 2.6,
2 as follows:

3 **⚠ WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

4 **2.4 Product Warnings**

5 Little Earth shall affix one of the warnings detailed in Section 2.3, supra, to the Product label
6 or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail
7 order catalog and/or the internet to customers located in California. For the purpose of this
8 agreement, "Product label" means a display of written, printed or graphic material that is printed on
9 or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a
10 type size of at least 6-point type and in no event smaller than the largest type size used for other
11 consumer information on the product.

12 **2.5 Mail Order Catalog Warnings**

13 In the event that, after the Effective Date, Little Earth prints new catalogs and sells Products
14 via mail order through such catalogs to customers located in California, Little Earth shall provide a
15 warning for each Product, both on the Product label in accordance with Section 2.4, and in the
16 catalog, according to this Section, in a manner that clearly associates the warning with the specific
17 Product being purchased. Any warning provided in a mail order catalog shall be in the same type
18 size or larger than other consumer information provided for the Product within the catalog and shall
19 be provided on the same page and in the same location as the display and/or description of the
20 Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b)
21 if the warning provided on the Product label also uses the Short-Form Warning content.

22 **2.6 Internet Warnings**

23 If, after the Effective Date, Little Earth sells Products via the internet to customers located in
24 California, Little Earth shall provide warnings for each Product both on the Product label, in
25 accordance with Section 2.4, supra, and by prominently displaying the warning to the customer prior
26 to completing the purchase or during the purchase of the Products without requiring customers to
27 seek out the warning. Warnings given in conjunction with the sale of the Products via the internet
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1 shall appear either: (i) on the same web page on which the Product is displayed; (ii) on the same
2 web page as the order form for the Product; or (iii) on one or more web pages displayed to a
3 purchaser during the checkout process. The warning shall appear in any of the above instances
4 adjacent to or immediately following the display or description of the Product for which it is given in
5 the same type size or larger than the Product description text. The internet warning may use the
6 Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product
7 label also uses the Short-Form Warning content.

8 Little Earth may also comply with this section by providing the warning using a clearly
9 marked hyperlink that includes the word "WARNING" on the same web page and in the same
10 location as the display and/or description of the Product, in type large enough so that the consumer
11 does not have to search for it in the general content, and in a manner that clearly associates it with
12 the Product to which the warning applies.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty Payments**

15 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
16 in the Notice, Complaint, and this Consent Judgment, Little Earth agrees to pay \$1,000 in civil
17 penalties. Little Earth's civil penalty payment will be allocated according to Health and Safety Code
18 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
19 Office of Environmental Health Hazard Assessment (OEHHHA), and the remaining twenty-five
20 percent (25%) of the penalty payment retained by Held. Little Earth shall issue its payment in two
21 checks made payable to (a) "OEHHHA" in the amount of \$750; and (b) "Anthony E. Held, Client
22 Trust Account" in the amount of \$250. Held's counsel shall be responsible for delivering OEHHHA's
23 portion of the penalty payment.

24 **3.2 Reimbursement of Attorneys' Fees and Costs**

25 The parties acknowledge that Held and his counsel offered to resolve this dispute without
26 reaching terms on their fees and costs. Shortly after the Parties finalized the other settlement terms,
27 they then negotiated the compensation to be paid to Held and his counsel under general contract
28 principles and the private attorney general doctrine, codified at California Code of Civil Procedure

1 § 1021.5, for all work performed through the mutual execution of this Consent Judgment and court
2 approval of the same, but exclusive of fees and costs on appeal, if any. Little Earth agrees to pay
3 \$19,000 by a check made payable to "The Chanler Group", for all fees and costs incurred
4 investigating, bringing this matter to Little Earth's attention, litigating, and negotiating a settlement
5 in the public interest.

6 **3.3 Payment Timing; Payments Held in Trust**

7 All payments due under this Consent Judgment shall be held in trust until the Court approves
8 the Parties' settlement. Little Earth shall deliver its civil penalty and attorneys' fee reimbursement
9 payments to its counsel, Ference & Associates LLC, within fifteen (15) days of the date that this
10 Consent Judgment is fully executed by the Parties. Little Earth's counsel shall provide Held's
11 counsel with written confirmation following its receipt of the settlement funds and shall continue to
12 hold the settlement funds in trust, until the Court grants the motion for approval of this Consent
13 Judgment, as contemplated by Section 5. Within five (5) days of the Effective Date, Little Earth's
14 counsel shall disburse the funds to Held's counsel at the payment address listed in Section 3.4,
15 below.

16 **3.4 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
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Held's Release of Proposition 65 Claims**

25 Held, acting on his own behalf and in the public interest, releases Little Earth and its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
27 attorneys (Releasees) and each entity to whom Little Earth directly or indirectly distributes or sells
28 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
retailers (including, without limitation, Rite Aid Corporation), franchisers, cooperative members,
licensors and licensees (Downstream Releasees) for any violations arising under Proposition 65 for

1 unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by
2 Little Earth prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
3 Consent Judgment constitutes compliance with Proposition 65 by Little Earth with respect to the
4 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or
5 distributed for sale by Little Earth after the Effective Date.

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 Little Earth, Releasees, and Downstream Releasees which shall be effective as a full and
9 final 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, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to DEHP in Products manufactured, imported, distributed or sold by Little Earth prior to
13 the Effective Date. Nothing in this Section shall affect Held's right to commence or prosecute an
14 action under Proposition 65 against a Releasee or Downstream Releasee that does not involve Little
15 Earth's Products.

16 **4.3 Little Earth's Release of Held**

17 Little Earth, on its own behalf and on behalf of its past and current agents, representatives,
18 attorneys, successors and/or assignees, hereby waive any and all claims against Held and his
19 attorneys and other representatives, for any and all actions taken or statements made (or those that
20 could have been taken or made) by Held and his attorneys and other representatives in the course of
21 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the
22 Products.

23 **5. COURT APPROVAL**

24 This Consent Judgment shall be null and void if, for any reason, it is not approved and
25 entered by the Court within one year after it has been fully executed by all Parties. Held and Little
26 Earth agree to support the entry of this agreement as a judgment, and to obtain the Court's approval
27 of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health
28 and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent

1 Judgment, which motion Held shall draft and file. In furtherance of obtaining such approval, the
2 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of
3 this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner.
4 For purposes of this section, "best efforts" shall include, at a minimum, supporting the motion for
5 approval, responding to any objection that any third-party may file or lodge, and appearing at the
6 hearing before the Court if so requested.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
14 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Little Earth
15 may provide Held with written notice of any asserted change in the law, and shall have no further
16 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Little
18 Earth from its obligation to comply with any pertinent state or federal law or regulation.

19 **8. NOTICE**

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

24 To Little Earth:

25 Rob Brandegee, Secretary and
26 Treasurer
27 Little Earth Productions, Inc.
2400 Josephine Street
Pittsburgh, PA 15203

To Held:

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

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With a Copy To:

Stanley Ference, Esq.
Ference & Associates LLC
409 Broad Street
Pittsburgh, PA 15143

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable 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.

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

12. MODIFICATION

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

1 **13. AUTHORIZATION**

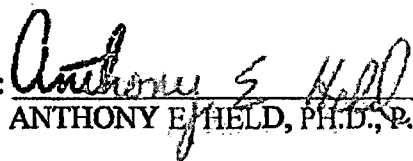
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

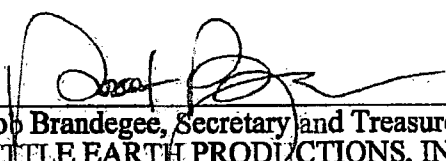
5
6 **AGREED TO:**

AGREED TO:

7 Date: 12/18/2018

8 Date: 12.17.18

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

11 By: 
12 Rob Brandege, Secretary and Treasurer
13 LITTLE EARTH PRODUCTIONS, INC.

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