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ANTHONY E. HELD, Ph.D., P.E.

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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF ALAMEDA

18
19 ANTHONY E. HELD, Ph.D., P.E.,

20 Plaintiff,

21 v.

22 REGENT BABY PRODUCTS CORPORATION
and DOES 1 through 150, inclusive,

23 Defendant.
24

No. BG07350969

[PROPOSED] CONSENT
JUDGMENT

HEALTH & SAFETY CODE §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Regent Baby Products Corporation**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Dr. Held” or “Plaintiff”) and defendant Regent Baby Products Corporation (“Regent” or
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Regent employs ten or more persons and, thus, 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 & Safety
13 Code §25249.6 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that Regent has manufactured, distributed and/or sold certain toys or other
16 children’s products containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite health
17 hazard warnings. DEHP and other phthalates such as butyl benzyl phthalate (“BBP”), and Di-n-butyl
18 phthalate (“DBP”), Di-isodecyl phthalate (“DIDP”), and di-n-hexyl phthalate (“DnHP”) as well as
19 lead, are listed as reproductive and developmental toxicants pursuant to Proposition 65. DEHP, BBP,
20 DBP, DIDP, and DnHP and lead shall be collectively referred to hereinafter as “Listed Chemicals.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows:

- 23 (a) “Toys”: designed for or reasonably used by children under six years of age, and
24 (b) “Child Care Articles”: designed for or reasonably used to facilitate sleep, relaxation,
25 grooming, hygiene, or feeding of children under three, or to help children under three with sucking or
26 teething.

27 All Toys and Child Care Articles containing Listed Chemicals and sold by Regent are referred
28 to hereinafter as the “Covered Products.”

1 **1.6 Notices of Violation**

2 On June 26, 2007, and November 20, 2007, Dr. Held served Regent and various public
3 enforcement agencies with two documents, each entitled a “60-Day Notice of Violation” (the
4 “Notices”) that provided Regent and public enforcers with notice of alleged violations of Health &
5 Safety Code §25249.6 for failing to warn consumers that the Covered Products that Regent sold
6 exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set
7 forth in the Notices.

8 **1.6.1 Supplemental Notice**

9 During the settlement negotiations in this case, Regent expressed a desire to resolve
10 potential Proposition 65 issues relating to Listed Chemicals and Covered Products it sells in
11 California other than those specifically identified in the Notice. In order for Dr. Held to perfect
12 standing to resolve those matters in the public interest, the parties have agreed that, prior to the
13 hearing on the motion for approval of this Consent Judgment, Dr. Held will also have served Regent
14 and the public enforcers with a document, entitled “Supplemental Notice of Violation”
15 (“Supplemental Notice”) that provides Regent and the public enforcers with notice that Regent was
16 alleged to be in violation of Health & Safety Code §25249.6 for failing to warn individuals that the
17 Covered Products expose individuals in California to the other Listed Chemicals (besides DEHP)
18 contained in the Covered Products and to reiterate that the scope of the Covered Products at issue
19 includes other Toys and Child Care Articles (besides the identified squeeze toy and baby bib).
20 Accordingly, the definition of Listed Chemicals shall be deemed to include the other (in addition to
21 DEHP) Listed Chemicals set forth in Paragraph 1.4 above and the definition of Covered Products
22 shall be deemed to include all Toys and Child Care Articles as defined in Paragraph 1.5 above upon
23 the sixty-sixth day following the date of issuance of the Supplemental Notice; provided, however,
24 that this Consent Judgment shall not, as of the sixty-sixth day include the other Listed Chemicals or
25 an expanded category of Covered Products if an authorized public prosecutor has, prior to that date,
26 filed a Proposition 65 enforcement action against Regent as to the expanded list of Listed Chemicals
27 and/or expanded category of Covered Products, whichever is applicable. Regent shall reasonably
28

1 cooperate with Dr. Held in providing additional information or representations necessary to enable
2 him to issue a Supplemental Notice.

3 **1.7 Complaints**

4 On October 12, 2007, Dr. Held, who was and is acting in the interest of the general public in
5 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County
6 of Alameda against Regent and Does 1 through 150, alleging violations of Health & Safety Code
7 §25249.6 based on the alleged exposures to DEHP contained in a squeeze toy and other Covered
8 Products sold by Regent. The case number for the action is BG 07350969. Regent filed an answer to
9 the Complaint on November 27, 2007.

10 On March 24, 2008, Dr. Held, who was and is acting in the interest of the general public in
11 California, filed another complaint (“Second Complaint”) in the Superior Court in and for the County
12 of Alameda against Regent and Does 1 through 150, alleging violations of Health & Safety Code
13 §25249.6 based on the alleged exposures to DEHP contained in a baby bib and other Covered
14 Products sold by Regent. The case number for the Second Complaint is RG08378057. When this
15 Consent Judgment’s approval by the Court becomes final, the Second Complaint shall be deemed
16 merged into the Action and, within 30 additional days, Dr. Held shall clarify the Court’s records by
17 dismissing the Second Complaint without prejudice. Until then, Regent Baby agrees to support Dr.
18 Held’s pending motion to consolidate these two actions with other matters pending in the Alameda
19 Superior Court.

20 **1.8 No Admission**

21 Regent denies the material, factual and legal allegations contained in Dr. Held’s Notice,
22 Complaint and Second Complaint and maintains that all Covered Products that they have sold and
23 distributed in California have been and are in compliance with all applicable laws. Nothing in this
24 Consent Judgment shall be construed as an admission by Regent of any fact, finding, issue of law, or
25 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
26 admission by Regent of any fact, finding, conclusion, issue of law, or violation of law, such being
27 specifically denied by Regent. However, this Section shall not diminish or otherwise affect Regent’s
28 obligations, responsibilities, and duties under this Consent Judgment.

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
3 jurisdiction over Regent as to the allegations contained in the Complaint, that venue is proper in the
4 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 31, 2008.

8 **2. INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS**

9 **2.1 Reformulation Commitments and Schedule**

10 As of the Effective Date, Regent shall only manufacture or cause to be manufactured Covered
11 Products for sale in California that are Phthalate Free and Lead Free. For purposes of this section
12 “Phthalate Free” Covered Products shall mean Covered Products containing less than or equal to
13 1,000 parts per million (“ppm”) of each of DEHP, BBP, DBP, DIDP and DnHP when analyzed
14 pursuant to one of the following test methodologies: (i) Environmental Protection Agency (“EPA”)
15 method 3580 and 8270; (ii) EPA method 3540 and 8270; (iii) in accordance with or with reference to
16 ASTM Method 3421-75 or any revised method issued by ASTM for measuring plasticizer content, or
17 (iv) in accordance with method the European Union’s EN-71 standard. For purposes of this section,
18 “Lead Free” Covered Products shall mean Covered Products containing PVC-components that have
19 less than 200 ppm lead when analyzed pursuant to EPA method 3050B, and containing non-PVC
20 accessible components that have less than 600 ppm of lead when analyzed pursuant to EPA method
21 3050B.¹ Products that are both Lead Free and Phthalate Free shall be referred to herein as
22 “Reformulated Products.” Regent further commits that 100% of the Covered Products that it ships
23 for sale in California after the Effective Date shall be Reformulated Products.

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25
26 ¹ In the event the State of California enacts legislation imposing more stringent standards than
27 those provided above, such reduced standards shall become effective for purposes of this Consent
28 Judgment as of the date provided for in the legislation.

1 **3. MONETARY PAYMENTS**

2 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

3 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
4 \$71,000. Regent shall pay \$11,000 in civil penalties and receive a credit of \$60,000 against this
5 amount in light of its prompt cooperation with Dr. Held in resolving this matter, its volunteering to
6 expand the scope of this Consent Judgment to cover a wider range of Listed Chemicals and Covered
7 Products, and its commitments to manufacture/cause to be manufactured and sell only Reformulated
8 Products in California after the Effective Date pursuant to Section 2.1 above.

9 Civil penalties are to be apportioned in accordance with California Health & Safety Code
10 §25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health
11 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as
12 provided by California Health & Safety Code §25249.12(d). Regent shall issue two separate checks
13 for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust For OEHHA”
14 in the amount of \$8,250, representing 75% of the total penalty; and (b) one check to “Hirst &
15 Chanler LLP in Trust for Anthony Held” in the amount of \$2,750, representing 25% of the total
16 penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
17 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be
18 provided five calendar days before the payment is due.

19 Payment shall be delivered to Dr. Held’s counsel within ten days of the date that this proposed
20 Consent Judgment is executed by all parties at the following address:

21 HIRST & CHANLER LLP
22 Attn: Proposition 65 Controller
23 455 Capitol Mall, Suite 605
24 Sacramento, CA 95814

24 **4. REIMBURSEMENT OF FEES AND COSTS**

25 **4.1 Attorney Fees and Costs.**

26 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
28 issue to be resolved after the material terms of the agreement had been settled. Regent then

1 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
2 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
3 Held and his counsel under general contract principles and the private attorney general doctrine
4 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the
5 mutual execution of this agreement. Regent shall reimburse Dr. Held and his counsel a total of
6 \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Regent’s
7 attention, and litigating and negotiating a settlement in the public interest. Regent shall issue a
8 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to “HIRST &
9 CHANLER LLP” and shall be delivered within ten days of the date that the proposed Consent
10 Judgment is executed by the parties to the following address:

11 HIRST & CHANLER LLP
12 Attn: Proposition 65 Controller
13 455 Capitol Mall, Suite 605
14 Sacramento, CA 95814

14 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

15 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Regent will reimburse Dr. Held
16 and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this
17 settlement agreement in the trial court, in an amount not to exceed \$8,500. Such additional fees and
18 costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are not
19 limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements
20 referenced in Health & Safety Code §25249.7(f), responding to any third party objections,
21 corresponding with opposing counsel and appearing before the Court related to the approval process.

22 Reimbursement of such additional fees and costs shall be due within ten days after receipt of a
23 billing statement from Dr. Held (“Additional Fee Claim”). Payment of the Additional Fee Claim
24 shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the following
25 address:
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27
28

1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 Capitol Mall Complex
4 455 Capitol Mall, Suite 605
5 Sacramento, CA 95814

6 Regent has the right to object to such reimbursement and may submit the resolution of this
7 issue to the American Arbitration Association (AAA) in Northern California to determine the
8 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of
9 objection or decision to arbitrate is received by Dr. Held by the end of the ten calendar days. If an
10 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the
11 Court pursuant to both CCP §1021.5 and this settlement agreement to recover additional attorney fees
12 and costs incurred as set forth in this paragraph. In the event Regent submits the matter to arbitration,
13 Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and costs incurred for the
14 arbitration.

15 **5. RELEASE OF ALL CLAIMS**

16 **5.1 Dr. Held's Release of Regent**

17 In further consideration of the promises and agreements herein contained, the injunctive relief
18 commitments set forth in Section 2.1, and for the payments to be made pursuant to Sections 3 and 4,
19 Dr. Held on behalf of himself, his past and current agents, representatives, attorneys, successors,
20 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
21 participate in, directly or indirectly, any form of legal action and releases all claims, including,
22 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
23 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
24 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
25 unknown, fixed or contingent (collectively "claims"), against Regent and each of its wholesalers,
26 licensors, licensees, import partners, auctioneers, retailers, franchisees, dealers, customers, owners,
27 purchasers, users, parent companies, corporate affiliates (including, without limitation Royal Value,
28 Inc.), subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
29 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is

1 limited to those claims that arise under Proposition 65, as such claims relate to the alleged failure to
2 warn about exposures to the Listed Chemicals contained in the Covered Products.

3 The parties further understand and agree that this release shall not extend upstream to any
4 entities that manufactured the Products or any component parts thereof, or any distributors or
5 suppliers who sold the Products or any component parts thereof to Regent.

6 **5.2 Regent's Release of Dr. Held**

7 Regent waives any and all claims against Dr. Held, his attorneys, and other representatives for
8 any and all actions taken or statements made (or those that could have been taken or made) by
9 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or
10 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to
11 the Covered Products.

12 **6. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and shall
14 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
15 has been fully executed by all parties, in which event any monies that have been provided to Dr.
16 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
17 (15) days after receiving written notice from Regent that the one year period has expired.

18 **7. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
21 remaining shall not be adversely affected.

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
25 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
26 Regent shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
27 extent that, the Covered Products are so affected.

1 **9. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
5 other party at the following addresses:

6 To Regent:

7 Roy Pomerantz
8 REGENT BABY PRODUCTS CORPORATION
9 18220 Liberty Ave
10 Jamaica, NY , 11412

11 With a copy to:

12 William F. Tarantino
13 MORRISON & FOERSTER LLP
14 425 Market Street, 35th Floor
15 San Francisco, California 94105

16 To Dr. Held:

17 Proposition 65 Coordinator
18 HIRST & CHANLER LLP
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

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

24 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
26 be deemed an original, and all of which, when taken together, shall constitute one and the same
27 document.

28 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
3 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
4 approval, Held and Regent and their respective counsel agree to mutually employ their best efforts to
5 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
6 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
7 at a minimum, cooperating on the drafting and filing any papers in support of the required motion for
8 judicial approval.

9 **13. MODIFICATION**

10 This Consent Judgment may be modified only: (1) by written agreement of the parties and
11 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
12 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
13 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
14 advance of its consideration by the Court.

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14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: May 23, 2008

By: _____
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: Roy Wm. Pomerantz, CEO
Defendant, REGENT BABY PRODUCTS CORPORATION

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 5/23/08

HIRST & CHANLER LLP

MORRISON & FOERSTER/LLP

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: Robert L. Falk
Robert L. Falk
Attorneys for Defendant
REGENT BABY PRODUCTS CORP.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

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

5 **AGREED TO:** APPROVED
6 Date: By Tony Held at 4:37 pm, May 27, 2008

7 By: Anthony E. Held
8 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:
Date: _____

By: _____
Defendant, REGENT BABY PRODUCTS CORPORATION

10
11
12
13
14 **APPROVED AS TO FORM:**

15 Date: 5/27/2008

16 HIRST & CHANLER LLP

17 By: Cliff A. Chanler
18 Clifford A. Chanler
19 Attorneys for Plaintiff
20 ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

21 Date: _____

MORRISON & FOERSTER LLP

22 By: _____
23 Robert L. Falk
24 Attorneys for Defendant
25 REGENT BABY PRODUCTS CORP.

26 **IT IS SO ORDERED.**

27 Date: _____

28 _____
JUDGE OF THE SUPERIOR COURT