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**ENDORSED
FILED**
ALAMEDA COUNTY

AUG 06 2008

Ada Yiu

, Exec. Off./Clerk

6 Attorneys for Defendant
REGENT BABY PRODUCTS CORPORATION

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12 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

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

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.

No. BG07350969

~~PROPOSED~~ **AMENDED**
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 Covered Products that Regent sold exposed
6 users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in
7 the Notices.

8 **1.7 Complaints**

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

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

25 **1.8 No Admission**

26 Regent denies the material, factual and legal allegations contained in Dr. Held’s Notice,
27 Complaint and Second Complaint and maintains that all Covered Products that they have sold and
28 distributed in California have been and are in compliance with all applicable laws. Nothing in this

1 Consent Judgment shall be construed as an admission by Regent of any fact, finding, issue of law, or
2 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
3 admission by Regent of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Regent. However, this Section shall not diminish or otherwise affect Regent's
5 obligations, responsibilities, and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

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

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean May 31, 2008.

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

14 **2.1 Reformulation Commitments and Schedule**

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

4 **3. MONETARY PAYMENTS**

5 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

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

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

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

24
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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 HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2 455 Capitol Mall, Suite 605
3 Sacramento, CA 95814

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

5 **4.1 Attorney Fees and Costs.**

6 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
8 issue to be resolved after the material terms of the agreement had been settled. Regent then
9 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
10 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
11 Held and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the
13 mutual execution of this agreement. Regent shall reimburse Dr. Held and his counsel a total of
14 \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to Regent's
15 attention, and litigating and negotiating a settlement in the public interest. Regent shall issue a
16 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "HIRST &
17 CHANLER LLP" and shall be delivered within ten days of the date that the proposed Consent
18 Judgment is executed by the parties to the following address:

19 HIRST & CHANLER LLP
Attn: Proposition 65 Controller
20 455 Capitol Mall, Suite 605
21 Sacramento, CA 95814

22 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

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

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

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

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

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Dr. Held’s Release of Regent**

21 In further consideration of the promises and agreements herein contained, the injunctive relief
22 commitments set forth in Section 2.1, and for the payments to be made pursuant to Sections 3 and 4,
23 Dr. Held on behalf of himself, his past and current agents, representatives, attorneys, successors,
24 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
25 participate in, directly or indirectly, any form of legal action and releases all claims, including,
26 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
27 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
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1 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
2 unknown, fixed or contingent (collectively "claims"), against Regent and each of its wholesalers,
3 licensors, licensees, import partners, auctioneers, retailers, franchisees, dealers, customers, owners,
4 purchasers, users, parent companies, corporate affiliates (including, without limitation Royal Value,
5 Inc.), subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
6 agents, and employees, and sister and parent entities (collectively "Releasees"). This release is
7 limited to those claims that arise under Proposition 65, as such claims relate to the alleged failure to
8 warn as raised in, or which could have been raised in, the Complaint and Second Complaint based on
9 the Notices.

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

13 **5.2 Regent's Release of Dr. Held**

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

19 **6. 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 all parties, in which event any monies that have been provided to Dr.
23 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
24 (15) days after receiving written notice from Regent that the one year period has expired.

25 **7. SEVERABILITY**

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

1 **8. 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 Covered Products, then
5 Regent shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
6 extent that, the Covered Products are so affected.

7 **9. NOTICES**

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

12 To Regent:

13 Roy Pomerantz
14 REGENT BABY PRODUCTS CORPORATION
15 18220 Liberty Ave
16 Jamaica, NY , 11412

17 With a copy to:

18 William F. Tarantino
19 MORRISON & FOERSTER LLP
20 425 Market Street, 35th Floor
21 San Francisco, California 94105

22 To Dr. Held:

23 Proposition 65 Coordinator
24 HIRST & CHANLER LLP
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565
28

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

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

16 **13. MODIFICATION**

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

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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:

AGREED TO:

6 Date: _____

Date: 7/31/08

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

By: Roy Wm Pomeroy
Defendant, REGENT BABY PRODUCTS CORPORATION

14 APPROVED AS TO FORM:

APPROVED AS TO FORM:

15
16 Date: _____

Date: 7/31/08

17 HIRST & CHANLER LLP

MORRISON & FOERSTER LLP

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

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

24 IT IS SO ORDERED.

25 Date: AUG 06 2008

ROBERT FREEDMAN
26 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 Anthony E Held at 10:44 am, 8/1/08

AGREED TO:
Date: _____

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

By: _____
Defendant, REGENT BABY PRODUCTS CORPORATION

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 8/1/08

Date: 7/31/08

HIRST & CHANLER LLP

MORRISON & FOERSTER LLP

By: David Janie A
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