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RAND INTERNATIONAL LEISURE
13 PRODUCTS LLC and WALGREEN CO.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF ALAMEDA

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

17 Plaintiff,

18 vs.

19 RAND INTERNATIONAL LEISURE
PRODUCTS LLC; WALGREEN CO.; and
20 DOES 1 through 150, inclusive,

21 Defendants.

22 AND CONSOLIDATED ACTIONS
23

Case No. RG07350981

[Original Case No. RG08386696]

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6

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I. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and Rand International Leisure Products LLC

This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D., P.E. ("Dr. Held" or "Plaintiff") and Defendant Rand International Leisure Products LLC ("Rand" or "Defendant"), with Plaintiff and Defendant collectively referred to as the "parties."

1.2 Plaintiff

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

1.3 Defendant

Rand employs 10 or more persons and thus is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Held alleges that Rand has manufactured, distributed and/or sold certain inflatable vinyl toys or other children's items, including but not limited to a Spiderman Beach Ball and Spiderman Softee Ball containing di(2-ethylhexyl)phthalate ("DEHP") without the requisite health hazard warnings. DEHP is a phthalate that is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as "the Listed Chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are Children's Inflatable Vinyl Toys (specifically, balls, swim rings and floats), and Children's Sporting Toys (specifically, soft stuffed balls), such as the Spiderman Beach Ball, Model # 578948, and Spiderman Softee Ball, Model #SPM-4946, containing the Listed Chemical and manufactured and/or sold or distributed by Rand and referred to hereinafter as the "Covered Products.")

1 **1.6 Notices of Violation**

2 On November 20, 2007, and May 23, 2008, Dr. Held served Rand and various public
3 enforcement agencies with two documents, the first entitled "60-Day Notice of Violation" and the
4 second entitled "Supplemental 60-Day Notice of Violation" (the "Notices") that provided Rand
5 and public enforcers with notice of alleged violations of Health & Safety Code § 25249.6 for
6 failing to warn consumers that the Covered Products that Rand manufactured, distributed and/or
7 sold exposed users in California to DEHP. No public enforcer has diligently prosecuted the
8 allegations set forth in the Notices.

9 **1.7 Complaints**

10 On February 22, 2008, Dr. Held, who was and is acting in the interest of the general
11 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for
12 the County of Monterey against Rand, Walgreen Co. and Does 1 through 150, alleging violations
13 of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in
14 inflatable vinyl toys, a Spiderman Beach Ball and other Covered Products manufactured,
15 distributed and/or sold by Rand. The case number for the action is M89139 ("Monterey Action").

16 Thereafter, Defendants Rand and Walgreen informed Dr. Held that they wished to transfer
17 the Monterey Action to Alameda County in order to consolidate it with six other cases involving
18 DEHP in children's products. Dr. Held agreed to voluntarily dismiss the Monterey Action, and
19 refile it in Alameda County, avoiding the need for a transfer motion, on condition that the parties
20 enter into a tolling agreement regarding the statute of limitations.

21 On May 8, 2008, the parties, by and through their respective counsel, executed a
22 Stipulation Tolling Proposition 65 Statute of Limitations, which stipulation tolled the statute of
23 limitations related to Dr. Held's Proposition 65 claims contained in the original 60-Day Notice of
24 Violation, retroactively, as of February 11, 2008.

25 On May 9, 2008, Dr. Held who was and is acting in the interest of the general public in
26 California dismissed the Monterey Action, and filed another complaint ("Alameda Action") in the
27 Superior Court in and for the County of Alameda against Rand, Walgreen Co. and Does 1
28 through 150, alleging violations of Health & Safety Code § 25249.6 based on the alleged

1 exposures to DEHP contained in inflatable vinyl toys, a Spiderman Beach Ball and other Covered
2 Products manufactured, distributed and/or sold by Rand. The case number for the Alameda
3 Action is RG08386696.

4 **1.8 No Admission**

5 Rand denies the material, factual and legal allegations contained in Dr. Held's Notices,
6 and the Complaints in the Monterey Action and the Alameda Action and maintains that all
7 Covered Products that they have manufactured, distributed and/or sold in California have been
8 and are in compliance with all applicable laws. Nothing in this Consent Judgment shall be
9 construed as an admission by Rand of any fact, finding, issue of law, or violation of law, nor shall
10 compliance with this Consent Judgment constitute or be construed as an admission by Rand of
11 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
12 Rand. However, this Section shall not diminish or otherwise affect Rand's obligations,
13 responsibilities, and duties under this Consent Judgment.

14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the parties stipulate that this Court has
16 jurisdiction over Rand as to the allegations contained in the Complaint, that venue is proper in the
17 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
18 Consent Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31,
21 2008.

22 **II. INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS**

23 **2.1 Reformulation Commitments and Schedule**

24 As of the Effective Date, Rand shall only manufacture or cause to be manufactured
25 Covered Products for sale in California that are Phthalate Free. For purposes of this section
26 "Phthalate Free" Covered Products shall mean Covered Products containing less than or equal to
27 0.1% DEHP, which is 1,000 parts per million ("ppm") of the Listed Chemical when analyzed
28 pursuant to: Environmental Protection Agency ("EPA") testing methodologies 3580 and 8270, or

1 other comparable methodologies recognized and accepted by one or more federal and/or state
2 agencies, including the Consumer Product Safety Commission, to determine whether the
3 respective levels have been exceeded in its Products. Products that are Phthalate Free shall be
4 referred to herein as "Reformulated Products." Rand further commits that 100% of the Covered
5 Products that it ships for sale in California after the Effective Date shall be Reformulated
6 Products. Rand represents that it first learned from the 60 Day Notice issued on November 20,
7 2007, that certain of its inflatable toys contained the Listed Chemical. As a result thereof, Rand
8 began to immediately implement a process for the reformulation of the Covered Products and,
9 effective March 1, 2008, required any shipments of the Covered Products to be labeled with the
10 requisite Proposition 65 warning until they were reformulated. As of July 31, 2008, Rand has no
11 longer sold Covered Products with the Listed Chemical.

12 **III. MONETARY PAYMENTS**

13 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

14 In settlement of all claims related to the Covered Products and Listed Chemical referred to
15 in the Monterey Action, the Alameda Action, and this Consent Judgment pursuant to Health &
16 Safety Code § 25249.7(b), Rand, on behalf of itself and those in its chain of distribution,
17 including Walgreen Co., shall pay \$18,000 in civil penalties.

18 Civil penalties are to be apportioned in accordance with California Health & Safety Code
19 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental
20 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to
21 Anthony Held as provided by California Health & Safety Code §25249.12(d). Rand shall issue
22 two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler
23 LLP in Trust for OEHHA" in the amount of \$13,500, representing 75% of the total penalty; and
24 (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$4,500,
25 representing 25% of the total penalty. Two separate 1099s shall be issued for the above-
26 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)
27 Anthony Held, whose information shall be provided five calendar days before the payment is due.

28 Payment shall be delivered to Dr. Held's counsel on or before October 31, 2008, at the

1 following address:

2 Hirst & Chanler LLP
3 Attn: Proposition 65 Coordinator
4 455 Capitol Mall, Suite 605
5 Sacramento, CA 95814

6 **IV. REIMBURSEMENT OF FEES AND COSTS**

7 **4.1 Attorney Fees and Costs**

8 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
10 this fee issue to be resolved after the material terms of the agreement had been settled. Rand then
11 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
12 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
13 to Dr. Held and his counsel under general contract principles and the private attorney general
14 doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed
15 through the mutual execution of this agreement. Rand, on behalf of itself and those in its chain of
16 distribution, including Walgreen Co., shall reimburse Dr. Held and his counsel a total of \$48,500
17 for fees and costs incurred as a result of investigating, bringing this matter to Rand's attention,
18 and litigating and negotiating a settlement in the public interest. Rand shall issue a separate 1099
19 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler
20 LLP" and shall be delivered on or before October 31, 2008, to the following address:

21 Hirst & Chanler LLP
22 Attn: Proposition 65 Coordinator
23 455 Capitol Mall, Suite 605
24 Sacramento, CA 95814

25 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval**

26 Pursuant to C.C.P. §§ 1021 and 1021.5, the Parties agree that Rand, on behalf of itself and
27 its chain of distribution, including Walgreen Co. will reimburse Dr. Held and his counsel for their
28 reasonable fees and costs incurred in seeking judicial approval of this settlement agreement in the
trial court, in an amount not to exceed \$8,500. Such additional fees and costs, exclusive of fees
and costs that may be incurred in the event of an appeal include, but are not limited to, drafting

1 and filing of the motion to approve papers, fulfilling the reporting requirements referenced in
2 Health & Safety Code §25249.7(f), responding to any third party objections, corresponding with
3 opposing counsel and appearing before the Court related to the approval process.

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

8 Hirst & Chanler LLP
9 Attn: Proposition 65 Coordinator
10 455 Capitol Mall, Suite 605
11 Sacramento, CA 95814

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

21 **V. CLAIMS COVERED AND RELEASE**

22 **5.1 Dr. Held's Release of Rand, and its Chain of Distribution**

23 In further consideration of the promises and agreements herein contained, the injunctive
24 relief commitments set forth in Section 2.1, and for the payments to be made pursuant to Sections
25 3 and 4, Dr. Held on behalf of himself, his past and current agents, representatives, attorneys,
26 successors, and/or assignees, and as to children's inflatable soft vinyl balls, swim rings and floats
27 and soft, stuffed balls only, in the interest of the general public, hereby waives all rights to
28 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
including, without limitation, all actions, and causes of action, in law or in equity, suits,

1 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
2 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
3 whether known or unknown, fixed or contingent (collectively "claims"), against Rand and each of
4 its wholesalers, licensors, licensees, import partners, auctioneers, retailers (including, without
5 limitation Walgreen Co., Dollar Tree and any other retailer in its chain of distribution in
6 California), franchisees, dealers, customers, owners, purchasers, users, parent companies,
7 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
8 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
9 "Releasees") that arise under Proposition 65, as such claims relate to the Releasees' alleged failure
10 to warn about exposures to the Listed Chemical contained in the Covered Products. Pursuant to
11 this release and the consideration therefore, Dr. Held shall execute and cause to be filed a Request
12 for Dismissal of Walgreen Co. from the Alameda Action without prejudice as to the *Spiderman*
13 *Beach Ball and Armfloat*, Model #578948, manufactured, distributed, or sold by Rand, as alleged
14 in the First Amended Complaint, within 10 days after this Consent Judgment is approved by the
15 Court pursuant to section VI below.

16 Dr. Held also, in his individual capacity only and *not* in his representative capacity,
17 provides a general release herein which shall be effective as a full and final accord and
18 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
19 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
20 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Dr.
21 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
22 provides as follows:

23 A general release does not extend to claims which the creditor does
24 not know or suspect to exist in his favor at the time of executing the
25 release, which if known by him must have materially affected his
settlement with the debtor.

26 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly
27 waives and relinquishes any and all rights and benefits which he may have under, or which may
28 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as

1 under any other state or federal statute or common law principle of similar effect, to the fullest
2 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
3 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
4 complete release notwithstanding the discovery or existence of any such additional or different
5 claims or facts arising out of the released matters.

6 The parties further understand and agree that this release shall not extend upstream to any
7 entities that manufactured the Products or any component parts thereof, or any distributors or
8 suppliers who sold the Products or any component parts thereof to Rand.

9 **5.2 Rand's Release of Dr. Held**

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

15 **VI. COURT APPROVAL**

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

22 **VII. SEVERABILITY**

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

26 **VIII. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered

1 inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered
2 Products, then Rand shall have no further obligations pursuant to this Consent Judgment with
3 respect to, and to the extent that, the Covered Products are so affected.

4 **IX. NOTICES**

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

9 To Rand:

10 Mark Worksman
11 RAND INTERNATIONAL LEISURE PRODUCTS LLC
12 51 Executive Blvd.
13 Farmingdale, NY 11735-4718

14 With a copy to:

15 Renee D. Wasserman, Esq.
16 ROGERS JOSEPH O'DONNELL
17 311 California St., 10th Floor
18 San Francisco, CA 94104

19 To Dr. Held:

20 Hirst & Chanler LLP
21 Attn: Proposition 65 Coordinator
22 2560 Ninth Street, Suite 214
23 Berkeley, CA 94710

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

26 **X. COUNTERPARTS, FACSIMILE SIGNATURES**

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

XI. 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 **XII. ADDITIONAL POST EXECUTION ACTIVITIES**

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

10 **XIII. MODIFICATION**

11 This Consent Judgment may be modified only: (1) by written agreement of the parties
12 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
13 motion of any party and entry of a modified Consent Judgment by the Court. The Attorney
14 General shall be served with notice of any proposed modification to this Consent Judgment at
15 least fifteen (15) days in advance of its consideration by the Court. Dr. Held shall be entitled to
16 his reasonable fees and costs incurred in the modification process under C.C.P. §1021.5 if Rand
17 seeks to modify the terms of this Consent Judgment.

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XIV. 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: 10/16/08

Date: _____

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

By: _____
Defendant RAND INTERNATIONAL LEISURE PRODUCTS LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 10/16/2008

Date: _____

HIRST & CHANLER LLP
By: *Laurence D. Haveson*
Laurence D. Haveson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

ROGERS JOSEPH O'DONNELL
By: _____
Renee D. Wasserman
Attorneys for Defendants
RAND INTERNATIONAL LEISURE PRODUCTS LLC and WALGREEN CO.

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XIV. 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: 10/16/08

Date: 10/16/08

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

By: *[Signature]*
Defendant RAND INTERNATIONAL
LEISURE PRODUCTS LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 10/16/2008

Date: 10/20/08

By: *Lauren D. Haverson*
HIRSH & CHANLER LLP
Lauren D. Haverson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: *[Signature]*
ROGERS JOSEPH O'DONNELL
Renee D. Wasserman
Attorneys for Defendants
RAND INTERNATIONAL LEISURE
PRODUCTS LLC and WALGREEN CO.