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10 Attorneys for Defendant
11 ROYAL BRUSH MANUFACTURING, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SACRAMENTO
15 UNLIMITED CIVIL JURISDICTION
16

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

18 Plaintiff,

19 v.

20 ROYAL BRUSH MANUFACTURING, INC.,
and DOES 1 through 150, inclusive,

21 Defendants.
22

Case No. 34-2008-00020532

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

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and defendant Royal Brush Manufacturing, Inc. (“Royal Brush” or
5 “Defendant”) with Plaintiff and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Defendant acknowledges that Royal Brush is a corporation with ten or more persons, and
12 is a “person in the course of doing business” within the meaning of the Safe Drinking Water and
13 Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (“Proposition
14 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that Royal Brush has distributed and/or sold children's paint smocks
17 containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without the
18 requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the State
19 of California to cause birth defects and other reproductive harm. DEHP shall be referred to
20 hereinafter as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: children's
23 vinyl paint smocks containing the plasticizer phthalate DEHP, such as the *Big Kids Choice*
24 *Children's Paint Smock BKAPRON (#0 90672 20105 8)*, distributed by Royal Brush for sale in the
25 State of California, which are referred to hereinafter as the “Covered Products.”

26 **1.6 Notice of Violation**

27 On April 22, 2008, Dr. Held served Defendant, and KB Toys Retail, Inc., and KB Toys,
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1 Inc., and various public enforcement agencies with a document entitled “60-Day Notice of
2 Violation” (“Notice”) alleging violations of California Health & Safety Code §25249.6 for failing
3 to warn consumers that the Covered Products exposed users in California to the Listed Chemical.

4 **1.7 Settlement Discussions**

5 Royal Brush responded to the Notice within the 60-day period, denied the allegations
6 including Plaintiff’s claim that the Covered Products caused exposure to the Listed Chemical,
7 exchanged product information and reached the settlement described herein shortly after the
8 expiration of the 60-day notice period.

9 **1.8 Complaint**

10 On August 27, 2008, Dr. Held, acting in the interest of the general public in California and
11 pursuant to the parties’ settlement, filed a complaint (“Complaint” or “Action”) in the Superior
12 Court in and for the County of Sacramento against Defendant and Does 1 through 150, alleging
13 violations of California Health & Safety Code §25249.6 based on the alleged exposures to the
14 Listed Chemical contained in the Covered Products.

15 **1.9 No Admission**

16 Royal Brush denies the material, factual, and legal allegations contained in Dr. Held’s
17 Notice and Complaint, and maintains that all Covered Products that it has sold and/or distributed
18 in California have been and are in compliance with all laws, including without limitation
19 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Royal
20 Brush of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent
21 Judgment constitute or be construed as an admission by Royal Brush of any fact, finding,
22 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission by Royal Brush of any fact, finding, conclusion, issue
24 of law, or violation of law, such being specifically denied by Royal Brush. However, this Section
25 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Royal Brush
26 under this Consent Judgment.

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1 **1.10 Consent to Jurisdiction**

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

6 **1.11 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
8 Consent Judgment is fully executed by the Parties.

9 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

10 **2.1 Product Warnings**

11 After the Effective Date, Royal Brush shall not sell, ship, or offer to be shipped for sale in
12 California Covered Products containing the Listed Chemical unless such Products are sold or
13 shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a), are
14 otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in
15 Section 2.3.

16 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.

19 **(a) Retail Store Sales.**

20 **(i) Product Labeling.**

21 Royal Brush may perform its warning obligation by ensuring that a warning is affixed to
22 the packaging, labeling, or directly on each Covered Product sold in retail outlets in California by
23 Royal Brush or its agents, that states:

24 **WARNING:** This product contains DEHP, a phthalate
25 chemical known to the State of California to
26 cause birth defects and other reproductive
27 harm.

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(ii) Point-of-Sale Warnings.

Royal Brush may perform its warning obligations by providing warning signs, via certified mail in the form below, to its customers in the State of California with clear instructions to post the warnings in close proximity¹ to the point of display of the Covered Products so that the consumer knows to which product the warning refers:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any Products shipped before the Effective Date; or
- (ii) Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as those Covered Products containing less than or equal to 1,000 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

Defendant shall use Environmental Protection Agency (“EPA”) testing methodologies 3580A, 3550C and/or 8270C to determine whether the levels have been exceeded in its Covered Products.

2.4 Reformulation Commitment

Defendant hereby commits to ensure that 100% of the Covered Products that they offer for sale in California after October 31, 2008, shall qualify as Reformulated Products or shall otherwise be exempt from the warning requirements of Section 2.1.

¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Covered Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 **2.5 Product Return or Destruction**

2 After receipt of plaintiff's Notice, Defendant promptly coordinated with KB Toys for the
3 return or destruction of all *Big Kids Choice Children's Paint Smocks, BKAPRON (#0 90672 20105*
4 *8)*, remaining in inventory for sale in California.

5 **3. MONETARY PAYMENTS**

6 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

7 In settlement of all the claims referred to in this Consent Judgment, Royal Brush shall pay
8 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
9 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
10 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to
11 Anthony Held as provided by California Health & Safety Code §25249.12(d). Royal Brush shall
12 issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &
13 Chanler LLP in Trust For OEHHA" in the amount of \$1,500, representing 75% of the total
14 penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of
15 \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above
16 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
17 Anthony Held, whose information shall be provided five calendar days before the payment is due.

18 Payment shall be delivered on or before August 31, 2008, to Dr. Held's counsel at the
19 following address:

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

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

26 **4.1 Attorney Fees and Costs**

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

1 other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
2 compensation due to Dr. Held and his counsel under general contract principles and the private
3 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
4 work performed through the mutual execution of this agreement and the anticipated work to seek
5 court approval. Royal Brush shall reimburse Dr. Held and his counsel a total of \$25,500 for fees
6 and costs incurred as a result of investigating, bringing this matter to Defendant's attention, and
7 litigating and negotiating a settlement in the public interest. Royal Brush shall issue a separate
8 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler
9 LLP," which shall be delivered on or before August 31, 2008 to the following address:

10 Hirst & Chanler LLP
11 Attn: Proposition 65 Controller
12 Capitol Mall Complex
13 455 Capitol Mall, Suite 605
14 Sacramento, CA 95814

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Dr. Held's Release of Defendant**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
17 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
18 the interest of the general public, hereby waives all rights to institute or participate in, directly or
19 indirectly, any form of legal action and releases all claims, including, without limitation, all
20 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
21 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
22 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
23 contingent (collectively "Claims"), against Defendant and each of its downstream distributors,
24 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers (including
25 without limitation KB Toys, Inc., and KB Toys Retail, Inc.), owners, purchasers, users, parent
26 companies, corporate affiliates, subsidiaries (including without limitation Royal Langnickel), and
27 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees,
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1 and sister and parent entities (collectively “Releasees”). This release is limited to those Claims
2 that arise under Proposition 65 as such claims relate to the alleged failure of the Defendant and
3 Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

4 The Parties further understand and agree that this release shall not extend upstream to any
5 entities that manufactured the Covered Products for Royal Brush (except for Covered Products
6 manufactured by Royal Brush) or any component parts thereof, or to any distributors or suppliers
7 who sold the Covered Products or any component parts thereof to Royal Brush.

8 **5.2 Defendant’s Release of Dr. Held**

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

14 **6. COURT APPROVAL**

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

21 **7. SEVERABILITY**

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

25 **8. ATTORNEYS’ FEES**

26 In the event that, after execution of this Consent Judgment: (1) a dispute arises with
27 respect to any provision of this Consent Judgment; or (2) either Party takes reasonable and
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1 necessary steps to enforce the terms of this Consent Judgment, the prevailing party in such dispute
2 or enforcement action shall be entitled to reasonable attorneys fees and costs.

3 **9. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California.

6 **10. NOTICES**

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

11 To Royal Brush:

12 Gus Dovellos, President
13 Royal Brush Manufacturing, Inc.
14 6707 Broadway
Merrillville, Indiana 46410

15 With a copy to:

16 Christopher Locke
17 FARELLA BRAUN & MARTEL, LLP
235 Montgomery Street, 30th Floor
San Francisco, California 94104

18 To Dr. Held:

19 Proposition 65 Coordinator
20 Hirst & Chanler LLP
21 2560 Ninth Street
Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

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

25 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and exchanged by facsimile, each
27 counterpart copy of which shall be deemed an original, and all of which, when taken together,
28

1 shall constitute one and the same document.

2 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

5 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

6 Dr. Held and Royal Brush agree to mutually employ their best efforts to obtain judicial
7 approval and entry of this Consent Judgment in a timely manner. The Parties acknowledge that,
8 pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain
9 judicial approval of this Consent Judgment. Accordingly, Dr. Held agrees to file a Motion to
10 Approve the Consent Judgment.

11 **14. MODIFICATION**

12 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
13 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
14 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall
15 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
16 days in advance of its consideration by the Court.

17 **15. AUTHORIZATION**

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

21 **AGREED TO:**

AGREED TO:

22 Date:

Date: 8/29/2008

23
24 By: _____

25 Plaintiff, ANTHONY E. HELD,
26 Ph.D., P.E.

By:  _____

George Dovellos, President
Defendant, ROYAL BRUSH
MANUFACTURING, INC.

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: HIRST & CHANLER LLP

Date: 8/29/08
FARELLA BRAUN & MARTEL, LLP

By: Daniel Bornstein
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: Christopher Locke
Attorneys for Defendant
ROYAL BRUSH MANUFACTURING,
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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1 shall constitute one and the same document.

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19 respective Parties and have read, understood, and agree to all of the terms and conditions of this
20 Consent Judgment.

21 **AGREED TO:**

AGREED TO:

22 Date: 09/03/2008

Date:

23 *Anthony E Held*

24 By: _____

By: _____

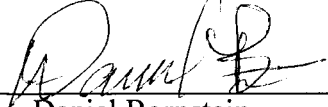
25 Plaintiff, ANTHONY E. HELD,
26 Ph.D., P.E.

George Dovellos, President
Defendant, ROYAL BRUSH
MANUFACTURING, INC.

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APPROVED AS TO FORM:

Date: 9/4/06
HIRST & CHANLER LLP

By: 
Daniel Bornstein
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

Date: _____
FARELLA BRAUN & MARTEL, LLP

By: _____
Christopher Locke
Attorneys for Defendant
ROYAL BRUSH MANUFACTURING,
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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