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Attorneys for Defendant
COSSTAR, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION

ANTHONY HELD, Ph.D., P.E.,
Plaintiff,
v.
COSSTAR, INC.; and DOES 1 through 150,
inclusive,
Defendants.

Case No. 34-2008-00020069

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

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1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and Cosstar, Inc.

This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and defendant Cosstar, Inc. (“Cosstar” or “Defendant”) with Plaintiff Held and Cosstar collectively referred to as the “parties.”

1.2 Plaintiff Dr. Anthony Held

Dr. Held represents he is an individual residing in the County of Sacramento 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 Defendants

Cosstar employs ten or more persons and 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 Cosstar has manufactured, distributed and/or sold certain sporting toys/ children’s items containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65, and is known to cause birth defects and other reproductive harm. DEHP shall be referred to hereinafter as the “listed chemical.”

1.5 Product Description

The products that are covered by this consent judgment are defined as follows: sporting toys/ children’s items containing the plasticizer phthalate DEHP, such as the Soft Foam Baseball Set (Baseball stick/glove/baseball) Item number 1003211 (#6 16591 10413 5). All such sporting toys/children’s items containing DEHP are referred to hereinafter as the “Products”.

1.6 Notice of Violation

Dr. Held asserts that on May 23, 2008, he served Cosstar and the Office of the California Attorney General of the State of California, all California counties’ District Attorneys and all City

1 Attorneys of California cities with populations exceeding 750,000, (collectively, “Public
2 Enforcers”) with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided
3 Cosstar and Public Enforcers with notice of alleged violations of California Health & Safety Code
4 §25249.6 for failing to warn consumers that the Products that Cosstar sold allegedly exposed users
5 in California to the listed chemical, while the items were handled or chewed. To the best of parties’
6 knowledge, no Public Enforcer has diligently prosecuted any of the allegations set forth in the
7 Notice.

8 **1.7 Complaint**

9 On August 22, 2008, 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 Sacramento against Cosstar, Inc.; and Does 1 through 150, alleging violations of California
12 Health & Safety Code §25249.6 based on the alleged exposures to the listed chemical contained in
13 the Products sold by Cosstar.

14 **1.8 No Admission**

15 Cosstar denies the material, factual and legal allegations contained in Dr. Held’s Notice and
16 Complaint and maintains that all Products that they have sold and distributed in California have
17 been and are in compliance with all laws. Nothing in this consent judgment shall be construed as an
18 admission by Cosstar of any fact, finding, issue of law, or violation of law, nor shall compliance
19 with this consent judgment constitute or be construed as an admission by Cosstar of any fact,
20 finding, conclusion, issue of law, or violation of law, such being specifically denied by Cosstar. In
21 order to avoid the costs and expenses of litigation and without admitting liability or wrongdoing,
22 Cosstar has elected to resolve this matter by settlement and on the terms set forth herein. However,
23 this section shall not diminish or otherwise affect Cosstar obligations, responsibilities, and duties
24 under this consent judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this consent judgment only, the parties stipulate that this Court has
27 jurisdiction over Cosstar as to the allegations contained in the Complaint, that venue is proper in the
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1 County of Sacramento and this Court has jurisdiction to enter and enforce this consent judgment as
2 a full and final binding resolution of all claims which were or could have been raised in the
3 Complaint against Cosstar based on the facts alleged therein and in the Notice.

4 **1.10 Effective Date**

5 For purposes of this consent judgment, the term "Effective Date" shall mean December 3,
6 2008.

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

8 **2.1 Product Warnings**

9 After the Effective Date, Cosstar shall not sell, ship, or offer to be shipped for sale in
10 California any Products containing the listed chemical unless: such Products are sold or shipped
11 with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise
12 exempt pursuant to Section 2.2 or comply with the reformulation standards set forth in Section 2.3,
13 or Proposition 65's regulation of the listed chemical with respect to the Products has been
14 preempted by federal law.

15 Each warning shall be prominently placed with such conspicuousness as compared with
16 other words, statements, designs, or devices as to render it likely to be read and understood by an
17 ordinary individual under customary conditions before purchase or use. Each warning shall be
18 provided in a manner such that the consumer or user understands to which specific Product the
19 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
20 arise.

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

22 **(i) Product Labeling.** Cosstar may perform its warning obligation by
23 ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in
24 retail outlets by Cosstar or its agents, that states:

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

1 reference the applicable warning and shall define the term “designated symbol” with the following
2 language on the inside of the front cover of the catalog or on the same page as any order form for
3 the Product(s):

4 **WARNING:** Certain products identified with this
5 symbol ▼ and offered for sale in this
6 catalog contain DEHP, a phthalate
7 chemical known to the State of California
8 to cause birth defects and other
9 reproductive harm.

10 The designated symbol must appear on the same page and in close proximity to the display
11 and/or description of the Product. On each page where the designated symbol appears, Cosstar
12 must provide a header or footer directing the consumer to the warning language and definition of
13 the designated symbol.

14 If Cosstar elects to provide warnings in the mail order catalog, then the warnings must be
15 included in all catalogs offering to sell one or more Products printed after the date of entry of this
16 consent judgment.

17 (ii) **Internet Website Warning.** A warning may be given in conjunction
18 with the sale of the Product via the Internet, provided it appears either: (a) on the same web page
19 on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)
20 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
21 purchaser during the checkout process. The following warning statement shall be used and shall
22 appear in any of the above instances adjacent to or immediately following the display, description,
23 or price of the Product for which it is given in the same type size or larger than the Product
24 description text:

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

 Alternatively, the designated symbol may appear adjacent to or immediately following the
display, description, or price of the Product for which a warning is being given, provided that the

1 California after January 1, 2009 so that the Products shall qualify as Reformulated Products or shall
2 otherwise be exempt from the warning requirements

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

5 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
6 \$2,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code
7 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
8 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony
9 Held as provided by California Health & Safety Code §25249.12(d). Cosstar shall issue two
10 separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in
11 Trust For OEHHA" in the amount of \$1,500 representing 75% of the total penalty; and (b) one
12 check to "'Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$500 representing
13 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,
14 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
15 information shall be provided five calendar days before the payment is due. Payment shall be
16 delivered to Dr. Held's counsel on or before thirty (30) days of the execution of this consent
17 judgment by the parties, at the following address:

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

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

22 **4.1 Attorney Fees and Costs.**

23 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee issue to be resolved after the material terms of the agreement had been settled. Cosstar then
26 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
27 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr.
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1 Held and his counsel under general contract principles and the private attorney general doctrine
2 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the
3 mutual execution of this agreement. Cosstar shall reimburse Dr. Held and his counsel the total of
4 \$16,000 for fees and costs incurred as a result of investigating, bringing this matter to Cosstar's
5 attention, and litigating and negotiating a settlement in the public interest. Cosstar shall issue a
6 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst &
7 Chanler LLP" and shall be delivered on or before thirty (30) days of the execution of this consent
8 judgment by the parties, to the following address:

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

12 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

13 Pursuant to CCP §§1021 and 1021.5, the parties further agree that Cosstar will reimburse
14 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
15 this settlement agreement in the trial court and fulfilling other necessary tasks in an amount not to
16 exceed \$2,000. Such additional fees and costs, exclusive of fees and costs that may be incurred in
17 the event of an appeal include, but are not limited to, drafting and filing of the motion to approve
18 papers, fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f),
19 responding to any third party objections, filing notice of entry of the Court's approval,
20 corresponding with opposing counsel and appearing before the Court related to the approval
21 process.

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

26 HIRST & CHANLER LLP
27 Attn: Proposition 65 Controller
28 455 Capitol Mall, Suite 605
Sacramento, CA 95814

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

10 Dr. Held's counsel agrees that it shall hold all civil penalties and attorney's fees and costs
11 paid pursuant to Section 3.1 and 4.1 above in its trust account until such time as this consent
12 judgment is approved by the Court. In the event that this consent judgment is not approved by the
13 Court in the time prescribed in Section 6 of this consent judgment, the civil penalties and attorney's
14 fees and costs paid pursuant to Sections 3.1 and 4.1 above, along with interest accrued at the
15 existing federal funds rate, shall be refunded to Cosstar.

16 **5. RELEASE OF ALL CLAIMS**

17 **5.1 Dr. Held's Release of Cosstar**

18 In further consideration of the promises and agreements herein contained, and for the
19 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
20 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
21 general public only as to children's baseball sets, hereby waives all rights to institute or participate
22 in, directly or indirectly, any form of legal action and releases all claims including, without
23 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
24 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
25 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
26 unknown, fixed or contingent (collectively "Claims"), that were brought or could have been brought
27 against Cosstar or its parents, subsidiaries or affiliates, and all of their customers, distributors,
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1 wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and
2 the successors and assigns of any of them, who may use, maintain, manufacture, distribute,
3 advertise, market or sell Products, and the officers, directors, managers, employees, members,
4 shareholders, agents, insurers and representatives of each of them (collectively “Defendant
5 Releasees”) in this Action. This release is limited to, but is intended to be a full, final, and binding
6 resolution of, those Claims that arise under Proposition 65, as against Cosstar and Defendant
7 Releasees, as such Claims relate to Cosstar’s alleged failure to warn about exposures to the Listed
8 Chemical contained in the Products.

9 The Parties further understand and agree that this release shall not extend upstream to any
10 entities that manufactured the Products for Cosstar or any component parts thereof or to any
11 distributors or suppliers who sold the Products or any component parts thereof to Cosstar.

12 Dr. Held also, in his individual capacity only, provides a general release herein which shall
13 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
14 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr.
15 Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of
16 the subject matter of the Notice. Dr. Held acknowledges that he is familiar with Section 1542 of the
17 California Civil Code, which provides as follows:

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

21 Dr. Held, in his individual capacity only, expressly waives and relinquishes any and all
22 rights and benefits which he may have under, or which may be conferred on him by the provisions
23 of Section 1542 of the California Civil Code as well as under any other state or federal statute or
24 common law principle of similar effect, to the fullest extent that he may lawfully waive such rights
25 or benefits pertaining to the released matters. In furtherance of such intention, the release hereby
26 given shall be and remain in effect as a full and complete release notwithstanding the discovery or
27 existence of any such additional or different claims or facts arising out of the released matters.

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5.2 Effect of Consent Judgment

Compliance with the terms of this consent judgment resolves any issue, now and in the future, concerning compliance by Cosstar and Defendant Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by Cosstar.

5.3 Cosstar's Release of Dr. Held

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

6. COURT APPROVAL

This consent judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties. If the Court does not approve the consent judgment, the parties shall meet and confer as to (and jointly agree on) whether to modify the language or appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the trial court's calendar. In the event that this consent judgment is entered by the Court and subsequently overturned by any appellate court or the motion to approve is not ultimately granted, any monies that have been provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision becoming final. If the Court's approval is ultimately overturned by an appellate court, the parties shall meet and confer as to (and jointly agree on) whether to modify the terms of the consent judgment. If the parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the trial court's calendar.

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7. SEVERABILITY

If, subsequent to the execution of this consent judgment, any of the provisions of this consent judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. 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, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

9. GOVERNING LAW

The terms of this consent judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of state or federal law generally, or as to the Products, then Cosstar shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this consent judgment with respect to, and to the extent that, the Products are so affected.

10. NOTICES

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

To Cosstar:

Steve T. Tsai, Esq.
LAW OFFICES OF STEVE TSAI
Olen Spectrum Centre
27 Mauchly, Suite 212
Irvine, CA 92618

1 To Dr. Held:

2 Proposition 65 Coordinator
3 HIRST & CHANLER, LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This consent judgment may be executed in counterparts and by facsimile, each of which
11 shall be deemed an original, and all of which, when taken together, shall constitute one and the
12 same document.

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

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

16 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a
18 noticed motion is required to obtain judicial approval of this consent judgment. Dr. Held and
19 Cosstar agree to mutually employ their best efforts to support the entry of this agreement as a
20 consent judgment by the trial court and defend the agreement against any appellate review.
21 Accordingly, Dr. Held agrees to file a motion to approve the consent judgment, and Cosstar agrees
22 to support it.

23 **14. MODIFICATION AND ATTORNEYS FEES**

24 This consent judgment may be modified only: (1) by written agreement of the parties and
25 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
26 any party and entry of a modified consent judgment by the Court. In the event that, after execution
27 of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions of this
28 Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
prevailing party shall be entitled to reasonable attorney's fees and costs.

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15. AUTHORIZATION

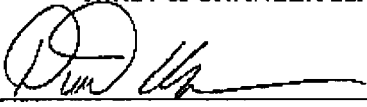
The undersigned are authorized to execute this consent judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this consent judgment.

<p>AGREED TO:</p> <p>APPROVED By Anthony E Held at 5:24 pm, 11/21/08</p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> Plaintiff, ANTHONY E. HELD, Ph.D., P.E.</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, COSSTAR, INC.</p>
<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>By: _____ David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>LAW OFFICES OF STEVE TSAI</p> <p>By: _____ Steve T. Tsai Attorneys for Defendant COSSTAR, INC.</p>
<p>IT IS SO ORDERED.</p> <p>Date: _____</p>	<p>_____ JUDGE OF THE SUPERIOR COURT</p>

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15. 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: Date: _____ By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: _____ By: _____ Defendant, COSSTAR, INC.
APPROVED AS TO FORM: Date: <u>11/21/2008</u> HIRST & CHANLER LLP By:  David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: _____ LAW OFFICES OF STEVE TSAI By: _____ Steve T. Tsai Attorneys for Defendant COSSTAR, INC.
IT IS SO ORDERED. Date: _____	_____ JUDGE OF THE SUPERIOR COURT

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15. 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: Date: _____ By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	AGREED TO: Date: <u>Nov, 21, 2008</u> By:  Defendant, COSSTAR, INC.
APPROVED AS TO FORM: Date: _____ HIRST & CHANLER LLP By: _____ David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	APPROVED AS TO FORM: Date: <u>Nov. 21, 2008</u> LAW OFFICES OF STEVE TSAI By:  Steve T. Tsai Attorneys for Defendant COSSTAR, INC.
IT IS SO ORDERED. Date: _____	_____ JUDGE OF THE SUPERIOR COURT