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16 Attorneys for Defendant
17 ORIENTAL TRADING COMPANY, INC.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF MARIN
20 UNLIMITED CIVIL JURISDICTION

21 ANTHONY E. HELD, Ph.D., P.E.,
22 Plaintiff,
23 v.
24 ORIENTAL TRADING COMPANY, INC.; and
25 DOES 1 through 150, inclusive,
26 Defendants.

Case No. CIV 094396

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Oriental Trading Company, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (hereinafter “Dr. Held” or “Plaintiff”) on behalf of himself and in the public interest pursuant
5 to California Health and Safety Code sections 25249.7(d)-(f), and defendant Oriental Trading
6 Company, Inc. (hereinafter “OTC” or “Defendant”), with Plaintiff and Defendant collectively
7 referred to as the “Parties” and each individually referred to as a “Party.”

8 **1.2 Plaintiff**

9 Dr. Held represents that he is an individual residing in California who seeks to promote
10 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
11 hazardous substances in consumer products.

12 **1.3 Defendant**

13 OTC employs ten or more persons and is a person in the course of doing business for
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
15 Safety Code §25249.5 *et seq.* (hereinafter “Proposition 65”).

16 **1.4 General Allegations**

17 Dr. Held alleges that OTC manufactured, distributed and/or sold soft novelty toys/balls and
18 inflate toys containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) to consumers located in the
19 State of California without Proposition 65’s requisite health hazard warnings. DEHP is listed
20 pursuant to Proposition 65 as known to the State of California to cause birth defects or other
21 reproductive harm.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment, which OTC manufactured,
24 distributed and/or sold to consumers located in the State of California, are defined as follows,
25 specifically: Polka Dot Beach Ball 49/187-P (#7 80984 758714 4), Mini Fire Hydrant Squirts
26 16/774 (#8 87600 04404 3), Hamburger and Hot Dog with Putty Eyes 39/1801 (#7 80984 90328
27 4), Super Durable Dressing Boards 60/5001 (#7 80984 85441 6), Soft Football 85/2131 (#8 87600
28

1 54452 9) and other soft novelty toys/balls and inflate toys containing DEHP. All such soft novelty
2 toys/balls and inflate toys containing DEHP are referred to hereinafter as the "Products".

3 **1.6 Notices of Violation**

4 On October 3, 2008, Dr. Held served OTC and various public enforcement agencies with a
5 document entitled "60-Day Notice of Violation" (hereinafter "Notice") that provided OTC and
6 public enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for
7 failing to warn consumers that the soft vinyl balls exposed users in California to DEHP.

8 On September 15, 2009, Dr. Held served OTC and various public enforcement agencies
9 with a document entitled "Supplemental 60-Day Notice of Violation" (hereinafter "Supplemental
10 Notice") that provided OTC and public enforcers with notice of alleged violations of California
11 Health & Safety Code §25249.6 for failing to warn consumers that the Products in addition to soft
12 vinyl balls exposed users in California to DEHP.

13 **1.7 Complaint**

14 On August 27, 2009, Dr. Held, who was and is acting in the interest of the general public
15 in California pursuant to California Health and Safety Code sections 25249.7(d)-(f), filed a
16 complaint (hereinafter "Complaint" or "Action") in the Superior Court in and for the County of
17 Marin against Oriental Trading Company, Inc. and Does 1 through 150, alleging violations of
18 California Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in
19 the Products. The Complaint shall be deemed amended by this Consent Judgment to include the
20 allegations set forth in the Supplemental Notice on the sixty-sixth (66th) day following the
21 issuance of the Supplemental Notice if no authorized public prosecutor has, prior to that date, filed
22 a Proposition 65 enforcement action as to the DEHP in the additional Products addressed in the
23 Supplemental Notice.

24 **1.8 No Admission**

25 OTC denies the material factual and legal allegations contained in Dr. Held's Notice,
26 Supplemental Notice, and Complaint, and maintains that all Products which OTC manufactured,
27 distributed and/or sold to consumers located in the State of California have been and are in
28

1 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
2 by OTC of any fact, finding, issue of law, or violation of law; nor shall compliance with this
3 Consent Judgment constitute or be construed as an admission by OTC of any fact, finding,
4 conclusion, issue of law, or violation of law, such being specifically denied by OTC. However,
5 this section shall not diminish or otherwise affect OTC's obligations, responsibilities, and duties
6 under this Consent Judgment.

7 **1.9 Consent to Jurisdiction**

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

12 **1.10 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean September
14 15, 2009.

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

16 **2.1 Reformulation Commitments and Schedule**

17 Except as otherwise provided for in this Agreement, as of the Effective Date, OTC shall
18 only manufacture and/or distribute Products for sale to California consumers that are Phthalate
19 Free, as set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall
20 mean Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP when
21 analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A
22 and 8270C, or equivalent methods as may be allowed by any state or federal agency. Further,
23 OTC represents that as a result of the Notice issued on October 3, 2008, it began an investigation
24 of its Products and potential reformulation opportunities and has since determined that it can and
25 will commit to the reformulation obligations set forth in this Agreement. Nothing in this Consent
26 Judgment shall be interpreted to relieve OTC from any obligation to comply with any pertinent
27 California or federal toxics control laws, other than Proposition 65, regarding the Products (e.g.,
28

1 the California ban on selling child care articles and certain children's toys containing more than
2 1,000 ppm of DEHP set forth in California Health and Safety Code section 108937, et seq.).

3 **3. MONETARY PAYMENTS**

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

5 In settlement of all the claims referred to in this Consent Judgment, OTC shall pay \$6,000
6 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192,
7 with 75% of these funds remitted to the State of California's Office of Environmental Health
8 Hazard Assessment (hereinafter "OEHHA") and the remaining 25% of the penalty remitted to
9 Anthony Held as provided by California Health & Safety Code §25249.12(d). OTC shall issue
10 two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP
11 in Trust For OEHHA" in the amount of \$4,500 representing 75% of the total penalty; and (b) one
12 check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$1,500 representing
13 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a)
14 OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held,
15 whose information shall be provided five calendar days before the payment is due. Held will
16 cause a W-9 Form with respect to himself to be provided to OTC or OTC's counsel prior to
17 payment.

18 Payment shall be delivered to Dr. Held's counsel on September 30, 2009 to the following
19 address:

20 HIRST & CHANLER LLP
21 Attn: Proposition 65 Controller
22 2560 Ninth Street, Suite 214
Berkeley, CA 94710

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

24 **4.1 Attorney Fees and Costs**

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

1 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
2 to Dr. Held and his counsel under general contract principles and the private attorney general
3 doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed
4 through the mutual execution of this agreement. OTC shall reimburse Dr. Held and his counsel
5 for fees and costs incurred as a result of investigating, bringing this matter to OTC's attention, and
6 litigating and negotiating a settlement in the public interest and completing the approval process.
7 OTC shall pay Dr. Held and his counsel \$46,500 for all attorneys' fees and costs. Hirst & Chanler
8 LLP will cause a completed W-9 Form with respect to itself to be provided to OTC or OTC's
9 counsel prior to payment. OTC shall issue a separate 1099 to Hirst and Chanler LLP for fees and
10 costs. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered on
11 September 30, 2009 to the following address:

12 HIRST & CHANLER LLP
13 Attn: Proposition 65 Controller
14 2560 Ninth Street, Suite 214
14 Berkeley, CA 94710

15 **5. RELEASE OF ALL CLAIMS**

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

17 In further consideration of the promises and agreements herein contained, and for the
18 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
19 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
20 the interest of the general public to the extent allowed by law, hereby waives all rights to institute
21 or 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 OTC and each of its downstream
26 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,
27 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers,
28 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent

1 entities (collectively “releasees”). This release is limited to those claims that arise under
2 Proposition 65 as such claims relate to OTC’s alleged failure to warn about exposures to the
3 DEHP contained in the Products.

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

7 **6. COURT APPROVAL**

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

13 **7. SEVERABILITY**

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

17 **8. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then OTC
21 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
22 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
23 Products are so affected.

24 **9. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant to
26 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
27
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1 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
2 other Party at the following addresses:

3 To OTC:

4 Duncan Joseph Moore
5 LATHAM & WATKINS LLP
6 355 South Grand Avenue
7 Los Angeles, California 90071-1560

8 To Dr. Held:

9 Proposition 65 Coordinator
10 HIRST & CHANLER LLP
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710-2565

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

23 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

24 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to
25 Approve the Agreement (“Noticed Motion”) is required to obtain judicial approval of this Consent
26 Judgment. In furtherance of obtaining such approval, Dr. Held, OTC, and their respective counsel
27 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
28 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For
purposes of this Paragraph, best efforts shall include at a minimum that OTC join in or file a
joinder in the Noticed Motion and participate in any oral argument before the Court on the hearing
of the Noticed Motion.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified Consent Judgment by the court. The Attorney General shall
5 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
6 days in advance of its consideration by the Court. Dr. Held shall be entitled to his reasonable fees
7 and costs incurred in the modification process under CCP §1021.5 if OTC seeks to modify the
8 terms of this Consent Judgment.

9 **14. AUTHORIZATION**

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

13 **AGREED TO:**

AGREED TO:

14 Date: September 17, 2009

Date: _____

15
16 By: Anthony E. Held
17 Plaintiff ANTHONY E. HELD,
18 Ph.D., P.E.

By: _____
Defendant ORIENTAL TRADING
COMPANY, INC.

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8 terms of this Consent Judgment.

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13
14 **AGREED TO:**

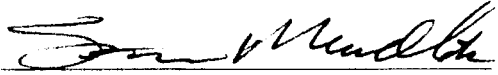
AGREED TO:

15 Date: _____

Date: September 18, 2009

16
17 By: _____

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

By: 

Defendant ORIENTAL TRADING
COMPANY, INC.