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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SOLANO
10 UNLIMITED CIVIL JURISDICTION
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12 ANTHONY E. HELD, Ph.D., P.E.,

13 Plaintiff,

14 v.

15 GOLF GIFTS AND GALLERY, INC.; and
16 DOES 1 through 150, inclusive,

17 Defendant.
18

Case No. FCS 032999

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

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Golf Gifts and Gallery, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Held”) and Golf Gifts and Gallery, Inc. (hereinafter “Golf Gifts”), with Held and
5 Golf Gifts collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Golf Gifts employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Golf Gifts has manufactured, distributed, and/or sold in the State of
15 California children’s vinyl bags containing di(2-ethylhexyl)phthalate (commonly referred to as
16 “DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
17 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical
18 known to the State of California to cause birth defects and other reproductive harm. DEHP is
19 referred to herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as children’s vinyl
22 bags containing di(2-ethylhexyl)phthalate including, but not limited to, *Baby’s 1st Golf Bag (#7*
23 *16419 03004 9)*. All such products containing DEHP are referred to hereinafter as the
24 “Products”.

25 **1.6 Notice of Violation**

26 On October 10, 2089, Held served Golf Gifts and various public enforcement agencies
27 with a “60-Day Notice of Violation” (the “Notice”) that provided Golf Gifts with notice of
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1 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the
2 Products that Golf Gifts sold exposed users in California to the Listed Chemical. After receiving
3 the Notice, Golf Gifts began to immediately start the process of reformulating such Products and
4 ceased any future shipment of those Products into California.

5 **1.7 Complaint**

6 On February 26, 2009, Held, who was and is acting in the interest of the general public in
7 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
8 County of Solano against Golf Gifts, and Does 1 through 150, alleging violations of Health &
9 Safety Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl
10 bags manufactured distributed and/or sold by Golf Gifts.

11 **1.8 No Admission**

12 Golf Gifts denies the material factual and legal allegations contained in Held’s Notice and
13 maintains that all products that it has sold and distributed in California, including the Products,
14 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
15 construed as an admission by Golf Gifts of any fact, finding, issue of law, or violation of law, nor
16 shall compliance with this Consent Judgment constitute or be construed as an admission by Golf
17 Gifts of any fact, finding, conclusion, issue of law or violation of law, such being specifically
18 denied by Golf Gifts. However, this section shall not diminish or otherwise affect the
19 obligations, responsibilities and duties of Golf Gifts under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has
22 jurisdiction over Golf Gifts as to the allegations contained in the Complaint, that venue is proper
23 in the County of Solano and that this Court has jurisdiction to enter and enforce the provisions of
24 this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 1,
27 2009.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitments and Schedule**

3 Except as otherwise provided for in this Agreement, as of the Effective Date, Golf Gifts
4 shall only manufacture and/or distribute Products for sale in California that are Phthalate Free, as
5 set forth below. For purposes of this Consent Judgment, “Phthalate Free” Products shall mean
6 Products containing less than or equal to 1,000 parts per million (“ppm”) of DEHP when
7 analyzed pursuant to Environmental Protection Agency (“EPA”) testing methodologies 3580A
8 and 8270C, or equivalent methods as may be allowed by any state or federal agency.

9 **3. MONETARY PAYMENTS**

10 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

11 In settlement of all the claims referred to in this Consent Judgment against it, Golf Gifts
12 shall pay \$1,500 in civil penalties to be apportioned in accordance with California Health &
13 Safety Code §25192, with 75% of these funds remitted to the State of California’s Office of
14 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held
15 as provided by California Health & Safety Code §25249.12(d). Golf Gifts shall issue two
16 separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in
17 Trust for the State of California’s Office of Environmental Health Hazard Assessment (OEHHA)
18 in the amount of \$1,125, representing 75% of the total penalty, and (b) one check to Hirst &
19 Chanler LLP in Trust for Held in the amount of \$375, representing 25% of the total penalty. Two
20 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,
21 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be
22 furnished, upon request, five calendar days before payment is due. The payments shall be
23 delivered on or before November 21, 2009, at the following address:

24 Hirst & Chanler LLP
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

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

2 **4.1 Attorney Fees and Costs**

3 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
5 issue to be resolved after the material terms of the agreement had been settled. After the other
6 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
7 compensation due to Held and his counsel under general contract principles and the private
8 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
9 work performed through the mutual execution of this agreement. Golf Gifts shall reimburse Held
10 and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Golf
11 Gifts's attention, and litigating and negotiating a settlement in the public interest. Golf Gifts shall
12 pay Held and his counsel \$20,000 for fees and costs incurred as a result of investigating, bringing
13 this matter to Golf Gifts's attention, and litigating and negotiating a settlement in the public
14 interest. Golf Gifts shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall
15 make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before November
16 21, 2009, to the following:

17 Hirst & Chanler LLP
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of Golf Gifts and Downstream Customers**

24 In further consideration of the promises and agreements herein contained, and for the
25 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
28 form of legal action and releases all claims, including, without limitation, all actions, and causes
of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,

1 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
2 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
3 (collectively "Claims"), that were brought or could have been brought against Golf Gifts and its
4 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
5 shareholders, agents, employees, and sister and parent entities and each of Golf Gifts downstream
6 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
7 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
8 their respective officers, directors, attorneys, representatives, shareholders, agents, employees and
9 sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any other
10 statutory or common law Claims that could have been asserted including such Claims as relate to
11 Golf Gifts and each of its Releasees alleged failure to warn about exposures to or identification of
12 the Listed Chemical contained in the Products.

13 **5.2 Golf Gifts Release of Held**

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

19 **6. COURT APPROVAL**

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

26 **7. SEVERABILITY**

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

3 **8. 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. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the
7 Products, then Golf Gifts shall provide written notice to Held of any asserted change in the law,
8 and shall have no further obligations pursuant to this consent judgment with respect to, and to the
9 extent that, the Products are so affected.

10 **9. NOTICES**

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

15 **To Golf Gifts:**

16 Ron Marks
17 Golf Gifts and Gallery, Inc.
18 N. 1675 Powers Lake Road
19 Powers Lake, WI 53159

20 **To Held:**

21 Proposition 65 Coordinator
22 Hirst & Chanler, LLP
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

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

28 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

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

1 same documents.

2 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

5 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

14 **13. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the parties
16 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful
17 motion of any party and entry of a modified consent judgment by the Court.

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1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

6 **APPROVED**

By Anthony Held at 2:11 pm, Oct 22, 2009

7 Date: _____

AGREED TO:

Date: _____

8 By: _____

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

By: _____

Defendant, GOLF GIFTS AND GALLERY,
INC.

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14. 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: October 23, 2009

By: Ben Mark - Agent
Defendant, GOLF GIFTS AND GALLERY, INC.