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12 DISGUISE, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION

16 ANTHONY E. HELD, Ph.D., P.E.,
17 Plaintiff,
18 v.
19 DISGUISE, INC., *et al.*,
20 Defendants.

Case No. RG07350981

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Disguise, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E
4 (hereinafter "Dr. Held") and Disguise, Inc. (hereinafter "Disguise"), with Dr. Held and Disguise
5 collectively referred to as the "Parties."

6 **1.2 Plaintiff**

7 Dr. 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 Disguise employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code §25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that Disguise has manufactured, distributed and/or sold in the State of
16 California costume accessories, of which children's inflatable toys are a type as described in the
17 Notice of Violation (paragraph 1.6 below), and which contain di(2 ethylhexyl)phthalate ("DEHP").
18 DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
19 Health & Safety Code §§25249.5, *et seq.* ("Proposition 65"), as a chemical known to the State of
20 California to cause birth defects and other reproductive harm. DEHP is referred to herein as the
21 "Listed Chemical."

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: *Buzz*
24 *Inflatable Jet Pack #11204-11 (#0 86947 11112 2)* and other costume accessories containing the
25 Listed Chemical. All such items shall be referred to herein as the "Products."
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1.6 Notice of Violation

On October 17, 2008, Dr. Held served Disguise and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Disguise and such public enforcers with notice that alleged that Disguise was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP.

1.7 Complaint

On March 13, 2009, Dr. Held, who was and is acting in the interest of the general public in California, in the Superior Court in and for the County of Alameda, filed a fourth amended complaint in the case of *Held v. Toys "R" Us*, adding Disguise, Inc. as a defendant and alleging violations of Health & Safety Code §25249.6 by Disguise based on the alleged exposures to DEHP contained in the Products manufactured, distributed and/or offered for sale in California by Disguise ("Complaint").

1.8 No Admission

Disguise denies the material, factual, and legal allegations contained in Dr. Held's Notice and maintains that all products that it has manufactured, distributed and/or sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Disguise of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Disguise of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Disguise. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Disguise under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Disguise as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

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1.10 Purpose of Consent Judgment

In order to avoid continued and protracted litigation, the Parties wish to resolve completely and finally the issues raised by the Notice and the Complaint pursuant to the terms and conditions described herein. In entering into this Consent Judgment, the Parties recognize that this Consent Judgment is a full and final settlement of all claims related to the Products and the Listed Chemical that were raised or that could have been raised in the Complaint. The Parties also intend for this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or collateral estoppel protection for Disguise, against any and all other claims based upon the same or similar allegations to the Products and the Listed Chemical.

1.11 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean June 30, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Disguise shall only manufacture or cause to be manufactured Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

2.2 Product Warnings

After the Effective Date, Disguise shall not sell, ship, or offer to be shipped for sale in California, Products containing the Listed Chemical unless such Products are shipped with the clear and reasonable warnings set out in Section 2.3 and 2.4.

Any warning issued for Products pursuant to Section 2.3 and 2.4 below, shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or, for Products shipped directly to an individual in California, before use.

1 **2.3 Warnings For Retail Store Sales**

2 **(a) Product Labeling.** Disguise may perform its warning obligation by
3 affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold
4 in retail outlets in California by Disguise or its agents, that states:

5 **WARNING:** This product contains DEHP, a chemical known
6 to the State of California to cause birth defects or
7 other reproductive harm.

8 **(b) Point-of-Sale Warnings.** Disguise may perform its warning
9 obligations by ensuring that signs are posted at retail outlets in the State of California where the
10 Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in
11 proximity to the point of display of the Products that states:

12 **WARNING:** This product contains DEHP, a chemical known
13 to the State of California to cause birth defects or
14 other reproductive harm.

15 Where more than one Product is sold in proximity to other like items or to those that do not
16 require a warning (e.g., Phthalate Free as defined in Section 2.1), the following statement must
17 be used:¹

18 **WARNING:** The following products contain DEHP, a
19 chemical known to the State of California to
20 cause birth defects or other reproductive harm:

21 *[list products for which warning is required]*

22 **2.4 Warnings For Mail Order Catalog and Internet Sales**

23 Disguise shall satisfy its warning obligations for Products it sells via mail order catalog or the
24 Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the
25 website. Warnings given in the mail order catalog or on the website shall identify the specific
26 Product to which the warning applies as further specified in subsections (a) and (b) below.

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

1 (a) **Mail Order Catalog Warning.** Any warning provided in a mail order
2 catalog must be in the same type size or larger than the Product description text within the catalog.
3 The following warning shall be provided on the same page and in the same location as each display
4 of the Product:

5 **WARNING:** This product contains DEHP, a chemical known
6 to the State of California to cause birth defects or
other reproductive harm.

7 Where it is impracticable to provide the warning on the same page and in the same location as
8 the display of the Product, Disguise may utilize a designated symbol (▲) to cross reference the
9 applicable warning and shall define the term "designated symbol" with the following language on the
10 inside of the front cover of the catalog and on the same page as any order form for the Product(s):

11 **WARNING:** Certain products identified with this symbol ▲
12 and offered for sale in this catalog contain
13 DEHP, a chemical known to the State of
California to cause birth defects or other
reproductive harm.

14 The designated symbol must appear on the same page and in close proximity to the display or
15 description of the Product on such page. On each page where the designated symbol appears,
16 Disguise must provide a reference directing the consumer to the warning language and definition of
17 the designated symbol.

18 If Disguise elects to sell one or more Products to consumers via mail order catalog after the
19 Effective Date, then the warnings must be included in all catalogs containing the Products which are
20 distributed in California as of the Effective Date.

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

2 **WARNING:** This product contains DEHP, a chemical known
3 to the State of California to cause birth defects or
4 other reproductive harm.

5 Alternatively, the designated symbol may appear adjacent to or immediately following the
6 display, description, or price of the Product for which a warning is being given, provided that the
7 following warning statement also appears elsewhere on the same web page, as follows:

8 **WARNING:** Products identified on this page with the
9 following symbol ▲ contain DEHP, a chemical
10 known to the State of California to cause birth
11 defects or other reproductive harm.

12 **2.5 Exceptions To Warning Requirements**

13 The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- 14 (i) any Products received by Disguise prior to receipt of the Notice, provided that
- 15 Disguise does not have actual knowledge, or reason from communications with its
- 16 suppliers of the Products to believe, that the Listed Chemical is present in such
- 17 Products in concentrations exceeding 1,000 ppm each; or
- 18 (ii) Phthalate Free Products (as defined in Section 2.1).

19 **2.6 Statutory Amendment to Proposition 65**

20 If a statutory, regulatory or other amendment to Proposition 65 is adopted that would exempt
21 Disguise from providing the warnings described herein, then upon the adoption of such statutory
22 amendment or regulation and to the extent authorized by such statutory amendment or regulation,
23 Disguise shall be relieved from its obligation to provide the warnings set forth herein.

24 **3. MONETARY PAYMENTS**

25 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment against it, Disguise shall
27 pay \$6,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
28 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided

1 by California Health & Safety Code §25249.12(d). Disguise shall issue two separate checks for the
2 penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
3 California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for
4 OEHHA") in the amount of \$4,500 representing 75% of the total penalty and (b) one check to "Hirst
5 & Chanler LLP in Trust for A. Dr. Held" in the amount of \$1,500, representing 25% of the total
6 penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued
7 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$4,500.
8 The second 1099 shall be issued to Dr. Held in the amount of \$1,500, whose address and tax
9 identification number shall be furnished, upon request, at least five calendar days before payment is
10 due. The payments shall be delivered on or before five business days after the Effective Date, at the
11 following address:

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

15 4. REIMBURSEMENT OF FEES AND COSTS

16 4.1 Attorney Fees and Costs.

17 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
18 private attorney general doctrine and principles of contract law. Under these legal principles,
19 Disguise shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating,
20 bringing this matter to Disguise attention, and negotiating a settlement in the public interest.
21 Disguise shall pay Dr. Held and his counsel \$30,000 for all attorneys' fees, expert and investigation
22 fees, and related costs (including \$6,000 for reasonably anticipated future fees and costs). The
23 payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall
24 be delivered on or before five business days after the Effective Date, at the following address:

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

1 Disguise shall issue a separate 1099 for fees and cost paid in the amount of \$30,000 to Hirst &
2 Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-
3 3929984).

4 **5. RELEASE OF ALL CLAIMS**

5 **5.1 Dr. Held's Release of Disguise**

6 In further consideration of the promises and agreements herein contained, and for the
7 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
8 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
9 general public pursuant to Health and Safety Code Section 25249.7(d), hereby waives all rights to
10 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
11 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
12 demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties,
13 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of
14 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
15 against Disguise and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers,
16 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
17 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
18 and employees, and sister and parent entities (including, but not limited to, Cesar S.A. Ltd., the
19 former parent corporation of the predecessor to Disguise, and well as old Disguise, Inc., the
20 predecessor to Disguise) (collectively "Releasees"). This release is limited to those claims that arise
21 under Proposition 65, as such claims relate to Disguise's alleged failure to warn about exposures to or
22 identification of DEHP contained in the Products.

23 In addition to the foregoing, Held, on behalf of himself, his past and current agents,
24 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
26 and releases all Claims against Disguise and each of its Releasees. This additional release, which
27 Held is providing in his individual capacity, is limited to those Claims that arise with respect to
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1 Proposition 65, as such Claims relate to Disguise's alleged failure to warn about exposures to or
2 identification of any chemicals listed under Proposition 65 contained in any products sold by
3 Disguise.

4 **5.2 Disguise's Release of Dr. Held**

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

10 **6. COURT APPROVAL**

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

16 **7. DISPUTES UNDER THIS CONSENT JUDGMENT**

17 Dr. Held may, by motion or application for an order to show cause before this Court, enforce
18 the terms and conditions contained in this Consent Judgment; however, no action to enforce this
19 Consent Judgment may be brought by Dr. Held unless the Parties have met, either in person or by
20 telephone, and endeavor to resolve the dispute in an amicable manner. In the event that legal
21 proceedings are initiated to enforce the provisions of this Consent Judgment, however, the prevailing
22 party in such proceeding may seek to recover its costs and reasonable attorney's fees. As used
23 herein, the term "prevailing party" means a party that is successful in obtaining relief more favorable
24 to it than the relief that the other party was amenable to providing during the Party's good faith
25 attempt to resolve the dispute that is the subject of such enforcement action.

1 **8. SEVERABILITY**

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

5 **9. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
9 Judgment are rendered inapplicable or no longer required as a result any such repeal or preemption or
10 rendered inapplicable by reason of law generally as to the Products, then Disguise shall have no
11 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
12 Products are so affected.

13 **10. NOTICES**

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

18 For Disguise:

19 Michael Dwyer, Esq.
20 JAKKS PACIFIC, INC.
21 22619 Pacific Coast Highway
22 Malibu, CA 90265

23 For Dr. Held:

24 Proposition 65 Coordinator
25 HIRST & CHANLER, LLP
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

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

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11. 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 same document.

12. 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).

13. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Disguise and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

14. MODIFICATION

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

AGREED TO:

AGREED TO:

Date: **APPROVED**
By Anthony E Held at 11:50 pm, 6/3/09

Date: 6/11/2009

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

By: Steve Stanley
Steve Stanley, President
DISGUISE, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT