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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E., Plaintiff, v. PEERLESS PLASTICS, INC.; and DOES 1 through 150 inclusive, Defendants.	Case No. RG07350981 **[PROPOSED] CONSENT JUDGMENT** Health & Safety Code §25249.6

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and Peerless Plastics, Inc.

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

1.2 Plaintiff

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

1.3 Defendants

Peerless 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 Peerless has manufactured, distributed and/or sold in the State of California children's vinyl smocks and vinyl mats containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq*. ("Proposition 65"), as a chemical known to the State of California to cause birth defects and other reproductive harm. DEHP is referred to herein as the "Listed Chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: (a) children's vinyl smocks containing the Listed Chemical, including, but not limited to, *Kinder Products KinderSmock (#0 26868 00823 1)*; and (b) vinyl mats containing the Listed Chemical, including, but not limited to, *KinderMat (#0 26868 00100 3)*. All such items shall be referred to herein as the "Products."

1.6 Notices of Violation

On November 7, 2008, Dr. Held served Peerless and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Peerless and such public enforcers with notice that alleged that Peerless was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the children's vinyl smocks that it sold exposed users in California to DEHP.

On June 10, 2009. Dr. Held served Peerless and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("Supplemental Notice") that provided Peerless and such public enforcers with notice that alleged that Peerless was in violation of California Health & Safety Code §25249.6 for filing to warn consumers and customers that the vinyl mats that it sold 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, Inc., et al.*, adding Peerless Plastics, Inc. as a defendant and alleging violations of Health & Safety Code §25249.6 by Peerless based on the alleged exposures to DEHP contained in the children's vinyl smocks manufactured, distributed and/or offered for sale in California by Peerless ("Complaint"). Provided that no authorized public prosecutor has then filed suit against Peerless based on the Supplemental Notice, the Complaint shall be deemed further amended as of August 15, 2009 to include Dr. Held's allegations as to DEHP in vinyl mats.

1.8 No Admission

Peerless denies the material, factual, and legal allegations contained in Dr. Held's Notice and Supplemental 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 Peerless 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 Peerless of any fact, finding, conclusion, issue of law, or violation of law, such being

specifically denied by Peerless. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Peerless 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 Peerless 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.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean June 10, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Peerless 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, Peerless 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.

2.3 Warnings For Retail Store Sales

(a) Product Labeling. Peerless may perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold

in retail outlets in California by Peerless or its agents, that states:

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

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

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

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

WARNING: The following products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm:

[*list products for which warning is required*]

2.4 Warnings For Mail Order Catalog and Internet Sales

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

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

[1] For purposes of this Consent Judgment, "sold in proximity to other like items" shall mean that the Product and 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.

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

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

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

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

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

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

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other 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 following warning statement also appears elsewhere on the same web page, as follows:

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

2.5 Exceptions To Warning Requirements

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

(i) any Products received by Peerless prior to receipt of the Notice, provided that Peerless does not have actual knowledge, or reason from communications with its suppliers of the Products to believe, that the Listed Chemical is present in such Products in concentrations exceeding 1,000 ppm each; or

(ii) Phthalate Free Products (as defined in Section 2.1).

3. MONETARY PAYMENTS

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

In settlement of all the claims referred to in this Consent Judgment against it, Peerless shall pay $6,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §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 by California Health & Safety Code §25249.12(d). Peerless shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for OEHHA") in the amount of $4,500, representing 75% of the total penalty and (b) one check to "Hirst & Chanler LLP in Trust for A. Dr. Held" in the amount of $1,500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of $4,500.

The second 1099 shall be issued to Dr. Held in the amount of $1,500 whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before ten days after the Effective Date, at the following address:

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

4. REIMBURSEMENT OF FEES AND COSTS

4.1 Attorney Fees and Costs.

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute 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 other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Peerless shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Peerless attention, and negotiating a settlement in the public interest. Peerless shall pay Dr. Held and his counsel $29,200 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on or before ten days after the Effective Date, at the following address:

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

Peerless shall issue a separate 1099 for fees and cost paid in the amount of $29,200 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).

4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.

Pursuant to CCP §§1021 and 1021.5, the Parties agree that Peerless will reimburse Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement in the trial court, in an amount not to exceed $8,500. Such additional fees and costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f), responding to any third party objections, corresponding with opposing counsel, and appearing before the Court related to the approval process.

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

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

Peerless has the right to object to such reimbursement and may submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California to determine the reasonableness of the additional fees and costs sought, provided that an arbitration such notice of objection or decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days provided for payment following receipt of the Additional Fee Claim. If an arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP §1021.5 and this settlement to recover additional attorney fees and costs incurred as set forth in this paragraph. In the event Peerless submits the matter to arbitration, Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and costs incurred for the arbitration.

5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of Peerless

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any 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, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Peerless and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Peerless's alleged failure to warn about exposures to or identification of DEHP contained in the Products.

In addition to the foregoing, Held, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against Peerless and each of its Releasees. This additional release, which Held is providing in his individual capacity, is limited to those Claims that arise with respect to Proposition 65, as such Claims relate to Peerless' alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in any products sold by Peerless. The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Peerless.

The Parties further understand and agree that the above releases shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Peerless.

5.2 Peerless's Release of Dr. Held

Peerless 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 it 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, in which event any monies that have been provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Peerless that the one-year period has expired.

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. 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Peerless shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

9. 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:

For Peerless:

Khaled Taqi-Eddin, Esq,
FOLEY & MANSFIELD PLLP
1111 Broadway
10th Floor
Oakland, CA 94607

For Dr. Held:

Proposition 65 Coordinator
Hirst & Chanler, LLP
2560 Ninth Street
Parker Plaza, Suite 214
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.

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 same document.

11. 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).

12. 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 Peerless 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, at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

13. 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.

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 hereof.

AGREED TO:

Date: 06-10-2009

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

AGREED TO:

Date:

By:
William Brummond, President
PEERLESS PLASTICS, INC.

IT IS SO ORDERED.

Date:

JUDGE OF THE SUPERIOR COURT

include, at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

13. 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.

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 hereof.

AGREED TO:

Date:_____

By:_____
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

By:_____
William Brummond, President
PEERLESS PLASTICS, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT