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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,

Plaintiff,

v.

GOLD, INC.; TARGET CORPORATION; and
DOES 1-150 inclusive,

Defendants.

Case No. MSC09-00563

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

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

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

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E
4 (hereinafter “Dr. Held”) and Gold, Inc. (hereinafter “Gold”), with Dr. Held and Gold collectively
5 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 Gold 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 Gold has manufactured, distributed and/or sold in the State of California
16 infant booties that can be mouthed, which may be handled and mouthed containing di(2-
17 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as
19 a chemical known to the State of California to cause birth defects and other reproductive harm.
20 DEHP is referred to herein as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: infant booties
23 that can be mouthed containing the Listed Chemical, including, but not limited to, infant *Circo*
24 *Sneakers – Tan (NB) #030-06-2361 (#07 153 44 3080 9)*. All such items shall be referred to herein
25 as the “Products.”

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1.6 Notice of Violation

On November 28, 2008, Dr. Held served Gold, Target Corporation and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided Gold and such public enforcers with notice that alleged that Gold 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 the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in either of the 60-Day Notice of Violation (“Notice”).

1.7 Complaint

On March 3, 2009, Dr. Held, who was and is acting in the interest of the general public in California, filed a complaint in the Superior Court in and for the County of Contra Costa against Gold, Target Corporation, and Does 1-150, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in infant booties that can be mouthed manufactured, distributed and/or sold by Gold (“Complaint”).

1.8 No Admission

Gold 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 Gold 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 Gold of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Gold. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Gold 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 Gold as to the allegations contained in the Complaint, that venue is proper in the County of Contra Costa, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 29, 2009.

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

4 **2.1 Reformulation Commitment**

5 Except as provided for in this Agreement, as of the Effective Date, Gold commits that it shall
6 only manufacture, distribute and/or sell Products in California that are Phthalate Free. For purposes
7 of this Consent Judgment, “Phthalate Free” Products shall mean Products containing less than or
8 equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to Environmental
9 Protection Agency (“EPA”) testing methodologies 3580A and 8270C, or equivalent methods as may
10 be allowed under Proposition 65 or any protocols accepted by the U.S. Consumer Product Safety
11 Commission.

12 Gold further commits that 100% of the Products that it offers for sale in California after July
13 31, 2009, shall be Phthalate Free. In the interim, Gold must comply with the warning requirements as
14 set forth below.

15 **2.2 Product Warnings**

16 After the Effective Date, Gold shall not sell, ship, or offer to be shipped for sale in California
17 Products containing the Listed Chemical unless such Products are shipped with the clear and
18 reasonable warnings set out in Section 2.3 and 2.4 or comply with the reformulation requirements of
19 Phthalate-Free Products set out in Section 2.1 above.

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

24 **2.3 Warnings For Retail Store Sales**

25 **(a) Product Labeling.** Gold may perform its warning obligation by
26 affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold
27 in retail outlets in California by Gold or its agents, that states:
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WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

(b) Point-of-Sale Warnings. Gold 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 states:

WARNING: This product contains DEHP, a phthalate 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 phthalate 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

Gold 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

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.

1 of the Product:

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

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

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

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

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

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

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

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

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

7 **2.5 Exceptions To Warning Requirements**

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

- 9 (i) any Products received by Gold prior to receipt of the Notices, provided that
10 Gold does not have actual knowledge, or reason from communications with its
11 suppliers of the Products to believe, that DEHP is present in such Products in
12 concentrations exceeding 1,000 ppm each; or
13 (ii) Phthalate-Free Products (as defined in Section 2.1).

14 **3. MONETARY PAYMENTS**

15 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

16 In settlement of all the claims referred to in this Consent Judgment against it, Gold shall pay
17 \$10,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
18 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
19 Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided
20 by California Health & Safety Code §25249.12(d). Gold shall issue two separate checks for the
21 penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
22 California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for
23 OEHHA") in the amount of \$7,500, representing 75% of the total penalty and (b) one check to "Hirst
24 & Chanler LLP in Trust for Dr. Held" in the amount of \$2,500, representing 25% of the total penalty.
25 Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to
26 OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) such amount of \$7,500. The
27 second 1099 shall be issued to Dr. Held in such amount of \$2,500, whose address and tax
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1 identification number shall be furnished, upon request, at least five calendar days before payment is
2 due. The payments shall be delivered on or before ten days after the Effective Date, at the following
3 address:

4 HIRST & CHANLER LLP
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

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

10 **4.1 Attorney Fees and Costs**

11 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
12 private attorney general doctrine and principles of contract law. Under these legal principles, Gold
13 shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing
14 this matter to Gold's attention, and negotiating a settlement in the public interest. Gold shall pay Dr.
15 Held and his counsel \$30,000 for all attorneys' fees, expert and investigation fees, and related costs.
16 The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and
17 shall be delivered on or before ten days after the Effective Date, at the following address:

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

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

25 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval**

26 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Gold will reimburse Dr. Held and
27 his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement
28 in the trial court, in an amount not to exceed \$4,000. 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 &

1 Safety Code §25249.7(f), responding to any third party objections, corresponding with opposing
2 counsel, and appearing before the Court related to the approval process.

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

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 Gold has the right to object to such reimbursement and may submit the resolution of this issue
13 to the American Arbitration Association (AAA) in Northern California to determine the
14 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of
15 objection or decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days
16 provided for payment following receipt of the Additional Fee Claim. If an arbitration notice is not
17 filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP
18 §1021.5 and this settlement to recover additional attorney fees and costs incurred as set forth in this
19 paragraph. In the event Gold submits the matter to arbitration, Dr. Held may seek, pursuant to CCP
20 §1021.5, reasonable attorney fees and costs incurred for the arbitration.

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Dr. Held’s Release of Gold**

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

1 nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against
2 Gold and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers
3 (including, but not limited to, Target Corporation), franchisees, dealers, customers, owners,
4 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers,
5 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent
6 entities (collectively “Releasees”). This release is limited to those claims that arise under Proposition
7 65, as such claims relate to Gold’s alleged failure to warn about exposures to or identification of
8 DEHP contained in the Products.

9 **5.2 Gold’s Release of Dr. Held**

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

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
18 has been fully executed by all parties, in which event any monies that have been provided to Dr.
19 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
20 (15) days after receiving written notice from Gold that the one-year period has expired. Within five
21 days of court approval, Dr. Held shall dismiss Target Corporation without prejudice from the action.

22 **7. SEVERABILITY**

23 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
24 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
25 remaining shall not be adversely affected.
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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 Covered Products, then Gold shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered 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 Gold:

Frederick Locker, Esq.
Locker Greenberg & Brainin PC
420 Fifth Avenue
New York NY 10018

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.

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

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

4 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

12 **13. MODIFICATION**

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

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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 hereof.

AGREED TO: **APPROVED** AGREED TO:
By Anthony E Held at 12:01 pm, 5/14/09 Date: 5/18/09

By: Anthony E Held By: William Gold III
ANTHONY E. HELD, Ph.D., P.E. William Gold III, President
GOLD, INC.

IT IS SO ORDERED.

Date: _____ _____
JUDGE OF THE SUPERIOR COURT