

1 Christopher M. Martin, State Bar No. 186021
HIRST & CHANLER LLP
2 2560 Ninth Street, Suite 214
Berkeley, CA 94710
3 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

4 Attorneys for Plaintiff
5 ANTHONY E. HELD, Ph.D., P.E.

6 Robert L. Falk, State Bar No. 142007
7 William F. Tarantino, State Bar No. 215343
MORRISON & FOERSTER LLP
8 425 Market Street
San Francisco, California 94105-2406
9 Telephone: (415) 268-7000
Facsimile: (415) 268-7522

10 Attorneys for Defendant
11 JOHN HINDE CURTEICH, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION
16

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

18 Plaintiff,

19 v.

20 JOHN HINDE CURTEICH, INC.; and DOES 1
through 150, inclusive,

21 Defendants.
22

Case No. CIV 09 1885

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and John Hinde Curteich, 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”) and defendant John Hinde Curteich, Inc. (hereinafter
5 “John Hinde” or “Defendant”), with Plaintiff and Defendant collectively referred to as the
6 “Parties” and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that John Hinde manufactured, distributed and/or sold key rings, mugs,
17 piggy banks, drink bottles and door plaques containing di(2-ethylhexyl)phthalate (hereinafter
18 “DEHP”) in the State of California without the requisite health hazard warnings. DEHP is listed
19 pursuant to Proposition 65 as known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: soft PVC
23 key rings, mugs, piggy banks, drink bottles and door plaques containing DEHP, including, but not
24 limited to the *Novelty Keyring (#0 32719 20473 8)* and which Defendant manufactured,
25 distributed, and/or sold in the State of California. All such soft polyvinyl chloride (“PVC”) key
26 rings, mugs, piggy banks, drink bottles and door plaques containing DEHP are referred to
27 hereinafter as the “Products”.
28

1 **1.6 Notices of Violation**

2 On December 23, 2008, Dr. Held served John Hinde and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that
4 provided John Hinde and public enforcers with notice of alleged violations of California Health &
5 Safety Code §25249.6 for failing to warn consumers that the soft PVC key rings exposed users in
6 California to DEHP.

7 On May 6, 2009, Dr. Held served John Hinde and various public enforcement agencies
8 with a document entitled “Supplemental 60-Day Notice of Violation” (hereinafter “Supplemental
9 Notice”) that provided John Hinde and public enforcers with notice of alleged violations of
10 California Health & Safety Code §25249.6 for failing to warn consumers that the Products in
11 addition to soft PVC key rings exposed users in California to DEHP.

12 **1.7 Complaint**

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

22 **1.8 No Admission**

23 John Hinde denies the material factual and legal allegations contained in Dr. Held's Notice,
24 Supplemental Notice, and Complaint, and maintains that all Products sold and distributed in
25 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
26 be construed as an admission by John Hinde of any fact, finding, issue of law, or violation of law;
27 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
28

1 John Hinde of any fact, finding, conclusion, issue of law, or violation of law, such being
2 specifically denied by John Hinde. However, this section shall not diminish or otherwise affect
3 John Hinde's obligations, responsibilities, and duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over John Hinde as to the allegations contained in the Complaint, that venue is proper
7 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of
8 this Consent Judgment.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean April 30,
11 2009.

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

13 **2.1 Product Warnings**

14 After the Effective Date, John Hinde shall not sell, ship, or offer to be shipped for sale in
15 California any Products unless such Products are sold or shipped with one of the clear and
16 reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to
17 Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

18 Each warning shall be prominently placed with such conspicuousness as compared with
19 other words, statements, designs, or devices as to render it likely to be read and understood by an
20 ordinary individual under customary conditions before purchase or use. Each warning shall be
21 provided in a manner such that the consumer or user understands to which specific Product the
22 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
23 arise.

24 **(a) Warnings For Retail Store Sales**

25 **(i) Product Labeling** John Hinde may meet its warning obligations
26 hereunder by ensuring that a warning is affixed to the packaging, labeling, or directly on each
27 Product sold in retail outlets by John Hinde or its agents, that states:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

(ii) Point-of-Sale Warnings John Hinde may alternatively meet its warning obligations hereunder by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Such 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 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.*, Reformulated Products as defined in Section 2.3), the following statement must instead 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]

(b) Mail Order Catalog and Internet Sales John Hinde shall satisfy its warning obligations hereunder for Products sold to California residents via mail order catalog or via the Internet 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 Sections 2.1(b)(i) and (ii).

(i) 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 the 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 and/or description of the Product:

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

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

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

17 The designated symbol must appear on the same page and in close proximity to the display
18 and/or description of the Product. On each page where the designated symbol appears, John
19 Hinde must provide a header or footer directing the consumer to the warning language and
20 definition of the designated symbol.

21 If John Hinde elects to provide warnings in the mail order catalog, then the warnings must
22 be included in all catalogs offering to sell one or more Products printed after the date of entry of
23 this Consent Judgment.

24 **(ii) Internet Website Warning.** A warning may be given in
25 conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the
26 same web page on which the Product is displayed; (b) on the same web page as the order form for
27 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
28 displayed to a purchaser during the checkout process, such as a drop-down menu that appears
whenever a Product is ordered for shipping to an address with a zip code in California. 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

1 **3. MONETARY PAYMENTS**

2 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, John Hinde shall pay
4 \$10,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
5 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
6 Health Hazard Assessment (hereinafter "OEHHA") and the remaining 25% of the penalty remitted
7 to Anthony Held as provided by California Health & Safety Code §25249.12(d). John Hinde shall
8 issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &
9 Chanler LLP in Trust For OEHHA" in the amount of \$7,500 representing 75% of the total penalty;
10 and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$2,500
11 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
12 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held,
13 whose information shall be provided five calendar days before the payment is due. Held will
14 cause a W-9 Form with respect to himself to be provided to John Hinde or John Hinde's counsel
15 prior to payment.

16 Payment shall be delivered to Dr. Held's counsel on or before June 1, 2009 at the
17 following address:

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

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

22 **4.1 Attorney Fees and Costs**

23 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee issue to be resolved after the material terms of the agreement had been settled. John Hinde
26 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
27 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
28

1 to Dr. Held and his counsel under general contract principles and the private attorney general
2 doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed
3 through the mutual execution of this agreement. John Hinde shall reimburse Dr. Held and his
4 counsel for fees and costs incurred as a result of investigating, bringing this matter to John Hinde's
5 attention, and litigating and negotiating a settlement in the public interest. John Hinde shall pay
6 Dr. Held and his counsel \$30,000 for all attorneys' fees and costs. Hirst & Chanler LLP will
7 cause a completed W-9 Form with respect to itself to be provided to John Hinde or John Hinde's
8 counsel prior to payment. John Hinde shall issue a separate 1099 to Hirst and Chanler LLP for
9 fees and costs. The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered
10 in three equal installments of \$10,000 each with the first installment delivered on or before June 1,
11 2009; the second installment delivered on or before July 1, 2009; and the third installment
12 delivered on or before August 1, 2009. All installments shall be delivered to the following
13 address:

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

18 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval**

19 Pursuant to CCP §§1021 and 1021.5, the Parties agree that John Hinde will reimburse Dr.
20 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
21 this settlement agreement in the trial court and performing other necessary tasks after the
22 execution of this agreement, in an amount not to exceed \$8,000. Such additional fees and costs,
23 exclusive of fees and costs that may be incurred in the event of an appeal include, but are not
24 limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements
25 referenced in Health & Safety Code §25249.7(f), corresponding with opposing counsel regarding
26 to any third party objections, filing a notice of entry of approval, and appearing before the Court
27 related to the approval process.

28 Reimbursement of such additional fees and costs shall be due within thirty days after
receipt of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional

1 Fee Claim shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the
2 following address:

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

7 John Hinde has the right to object to such reimbursement and may submit the resolution of
8 this issue to the American Arbitration Association (AAA) in Northern California to determine the
9 reasonableness of the additional fees and costs sought, provided that a notice of objection or
10 decision to arbitrate is received by Dr. Held by the end of ten calendar days after receipt by John
11 Hinde of the billing statement from Dr. Held. If an arbitration notice is not filed with AAA in a
12 timely manner, Dr. Held may file a motion with the Court pursuant to both CCP §1021.5 and this
13 settlement agreement to recover additional attorney fees and costs incurred as set forth in this
14 paragraph.

15 **5. RELEASE OF ALL CLAIMS**

16 **5.1 Dr. Held's Release of John Hinde**

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 John Hinde and each of its
26 downstream wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
27 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their
28 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
29 sister and parent entities (collectively “releasees”). This release is limited to those claims that

1 arise under Proposition 65 as such claims relate to John Hinde's alleged failure to warn about
2 exposures to the DEHP contained in the Products.

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

6 **5.2 John Hinde's Release of Dr. Held**

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

12 **6. COURT APPROVAL**

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

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then John
27 Hinde shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
28

1 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 Products are so affected.

3 **9. NOTICES**

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

8 To John Hinde:

9 William F. Tarantino
10 MORRISON & FOERSTER LLP
11 425 Market Street
12 San Francisco, California 94105-2406

13 With a copy to:

14 Mike Thompson
15 John Hinde
16 431 South Lombard Street
17 Oxnard, CA 93030

18 To Dr. Held:

19 Proposition 65 Coordinator
20 HIRST & CHANLER LLP
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile, each of which
28 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).

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

10 **13. MODIFICATION**

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

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

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.

6 **AGREED TO:**

AGREED TO:

7 Date: 05/15/2009

Date: 5/15/09

8
9 By: *Anthony E Held*
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

By: *John Hinde Curteich*
Defendant JOHN HINDE CURTEICH,
INC.

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: 5/15/09
13 HIRST & CHANLER LLP

Date: _____
MORRISON & FOERSTER LLP

14
15 By: *Chris*
16 Christopher M. Martin
Attorneys for Plaintiff
17 ANTHONY E. HELD, Ph.D., P.E.

By: _____
William F. Tarantino
Attorneys for Defendant
JOHN HINDE CURTEICH, INC.

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
6 **AGREED TO:**

AGREED TO:

7 Date: _____

Date: _____

8
9 By: _____
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

By: _____
Defendant JOHN HINDE CURTEICH,
INC.


11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: _____
13 HIRST & CHANLER LLP

Date: May 18, 2009
MORRISON & FOERSTER LLP

14
15 By: _____
16 Christopher M. Martin
17 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: 
William F. Tarantino
Attorneys for Defendant
JOHN HINDE CURTEICH, INC.

18
19
20
21
22
23
24
25
26
27
28