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12 TOWN & COUNTRY LINEN CORP.

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

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

18 Plaintiff,

19 v.

20 TOWN & COUNTRY LINEN CORP.; and
21 DOES 1 through 150, inclusive,

22 Defendants.

Case No. 30-2009-0003698

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

1 **I. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Town & Country Linen Corporation**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Dr. Held" or "Plaintiff") and defendant Town & Country Linen Corporation ("Town &
5 Country" or "Defendant") with Dr. Held and Town & Country collectively referred to as the
6 "parties."

7 **1.2 Plaintiff Dr. Anthony Held**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Town & Country has manufactured, distributed and/or sold certain
17 vinyl placemats containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of
18 California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65,
19 and is known to cause birth defects and other reproductive harm. DEHP shall be referred to
20 hereinafter as the "listed chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows:

23 (a) vinyl placemats containing DEHP including, but not limited to, *Vinyl Placemat,*
24 *#106901DPC (#0 28332 45997 6)*. All such vinyl placemats containing DEHP are referred to
25 hereinafter as the "Products;" and

26 (b) shower curtains, liners, and table cloths made from the same vinyl material
27 containing DEHP as the vinyl placemats ("Additional Products").
28

1 All Products and Additional Products are collectively referred to hereinafter as the "Covered
2 Products."

3 **1.6 Notice of Violation**

4 On or about December 23, 2008 and July 17, 2009, respectively, Dr. Held served Town &
5 Country and various public enforcement agencies with a "60-Day Notice of Violation" and
6 "Supplemental 60-Day Notice of Violation" (collectively, the "Notices") that provided Town &
7 Country and public enforcers with notice of alleged violations of Health & Safety Code §25249.6
8 for failing to warn consumers that Covered Products that Town & Country manufactured,
9 distributed, and/or sold exposed users in California to DEHP. No public enforcer diligently
10 prosecuted the allegations set forth in the Notice.

11 **1.7 Complaint**

12 On March 4, 2009, Dr. Held, who was and is acting in the interest of the general public in
13 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County
14 of Sacramento against Town & Country; and Does 1 through 150, alleging violations of California
15 Health & Safety Code §25249.6 based on the alleged exposures to the listed chemical contained in
16 the Covered Products sold by Town & Country. Upon the expiration of the sixty-day waiting
17 period following the issuance of the Supplemental 60-Day Notice of Violation and provided that no
18 public prosecutor has diligently prosecuted the covered claims, the Complaint shall be deemed
19 amended to include Held's allegations as to the Additional Products.

20 **1.8 No Admission**

21 Town & Country denies the material, factual, and legal allegations contained in Dr. Held's
22 Notice and Complaint, and maintains that all Covered Products sold or distributed by Town &
23 Country in California have been and are in compliance with all laws. Nothing in this Consent
24 Judgment shall be construed as an admission by Town & Country of any fact, finding, issue of law,
25 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
26 an admission by Town & Country of any fact, finding, conclusion, issue of law, or violation of law,
27 such being specifically denied by Town & Country. In order to avoid the continued cost and
28 expense of litigation and without admitting liability or wrongdoing, the parties have elected to

1 resolve this matter by settlement and on the terms set forth herein. However, this section shall not
2 diminish or otherwise affect Town & Country's obligations, responsibilities, and duties under this
3 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 Town & Country as to the allegations contained in the Complaint, that venue is
7 proper in the County of Sacramento and this Court has jurisdiction to enter and enforce this Consent
8 Judgment as a full and final binding resolution of all claims which were or could have been raised
9 in the Complaint against Town & Country based on the facts alleged therein and in the Notice.

10 **1.10 Effective Date**

11 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31, 2009.

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

13 **2.1 Product Warnings**

14 After August 31, 2009, Town & Country shall not sell, ship, or offer to be shipped for sale
15 in California any Covered Products containing the listed chemical unless: such Covered Products
16 are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and
17 (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set
18 forth in Section 2.3, below.

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

25 **(a) Retail Store Sales**

26 **(i) Product Labeling.** Town & Country may affix to the packaging,
27 labeling, or directly on each Product sold in retail outlets in California by Town & Country or its
28 agents, that states:

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

5 (ii) **Point-of-Sale Warnings.** Town & Country may, alternatively,
6 perform its warning obligations by providing signs in the form below to its customers with
7 instructions to post the warnings in close proximity to the point of display of the Covered Products.

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

12 Where more than one Covered Product is sold in proximity to other like items or to those
13 that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following
14 statement must be used:¹

15 **WARNING:** The following products contain DEHP, a
16 phthalate chemical known to the State of
17 California to cause birth defects and other
18 reproductive harm.

19 *[list products for which warning is required.]*

20 (b) **Mail Order Catalog and Internet Sales.** In the event that Town & Country
21 maintains and/or operates a mail order catalog or website through which its products may be
22 purchased, Town & Country shall satisfy its warning obligations for Covered Products sold via such
23 mail order catalog or website to California residents by providing a warning: (i) in the mail order
24 catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall
25 identify the specific Product to which the warning applies as further specified in Sections 2 1(b)(i)
26 and (ii).

27 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
28 order catalog must be in the same type size or larger than the Product description text within the

¹ For purposes of this Consent Judgment, "sold in proximity to other like items" shall mean that the Covered 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 catalog. The following warning shall be provided on the same page and in the same location as the
2 display and/or description of the Covered Products:

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

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

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

18 The designated symbol must appear on the same page and in close proximity to the display
19 and/or description of the Covered Products. On each page where the designated symbol appears,
20 Town & Country must provide a header or footer directing the consumer to the warning language
21 and definition of the designated symbol.

22 If Town & Country elects to provide warnings in the mail order catalog, then the warnings
23 must be included in all catalogs offering to sell one or more Covered Products printed after the
24 Effective Date.

25 (ii) **Internet Website Warning.** A warning may be given in conjunction
26 with the sale of the Covered Products via the Internet, provided it appears either: (a) on the same
27 web page on which the Covered Product is displayed; (b) on the same web page as the order form
28 for the Covered Product; (c) on the same page as the price for any Product; or (d) 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

1 the display, description, or price of the Covered Products for which it is given in the same type size
2 or larger than the Covered Product description text.

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

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

10 **WARNING:** Products identified on this page with the
11 following symbol contain DEHP, a
12 phthalate chemical known to the State of
13 California to cause birth defects and other
14 reproductive harm: ▼.

15 **2.2 Exceptions To Warning Requirements**

16 The warning requirements set forth in Section 2.1 shall not apply to:

- 17 (i) any Covered Product manufactured by Town & Country prior to August 31,
18 2009;
- 19 (ii) any Covered Product shipped by Town & Country to its customers in
20 California prior to August 31, 2009; or
- 21 (iii) Reformulated Products (as defined in Section 2.3 below).

22 **2.3 Reformulation Standards**

23 Reformulated Products are defined as those containing less than or equal to 1,000 parts per
24 million ("ppm") of DEHP, as measured by Environmental Protection Agency ("EPA") testing
25 methodologies 3580A and 8270C.

26 **2.4 Reformulation Commitment**

27 Upon Town & Country's receipt of the December 2008 Notice, Town & Country undertook
28 immediate efforts to reformulate the Covered Products. Town & Country hereby commits to use its
best efforts to reformulate one hundred percent (100%) of the Covered Products that it offers for

1 sale in California after August 31, 2009, so that the Covered Products shall qualify as Reformulated
2 Products.

3 **3. MONETARY PAYMENTS**

4 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

5 3.1.1 In settlement of all claims related to the Covered Products and Listed
6 Chemical referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety
7 Code § 25249.7(b), Town & Country shall pay \$40,000 in civil penalties.

8 3.1.2 Civil penalties are to be apportioned in accordance with California Health &
9 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
10 Environmental Health Hazard Assessment ("OEIHA") and the remaining 25% of the penalty
11 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Town &
12 Country shall issue two separate checks for the penalty payment: (a) one check made payable to
13 "Hirst & Chanler LLP in Trust for OEIHA" in the amount of \$30,000, representing 75% of the
14 total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount
15 of \$10,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the
16 above-payments: (a) OEIHA, P.O. Box 4010, Sacramento, CA 95814 (FIN: 68-0284486); and (b)
17 Anthony Held, whose information shall be provided five calendar days before the payment is due.

18 3.1.3 Payment Timing. Not later than five (5) days following the execution of this
19 Consent Judgment by both parties, the penalty payment shall be made by Town & Country to
20 Hunton & Williams, to be held in a client Trust Account. Such penalty payment shall remain in the
21 Trust Account until this Consent Judgment has been entered by the Court.

22 Subject to the provisions of section 4.1, below, the penalty payment held by Hunton
23 & Williams shall be delivered to the following address within two business days of entry of this
24 Consent Judgment:

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

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

2 **4.1 Attorney Fees and Costs**

3 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
5 this fee issue to be resolved after the material terms of the agreement had been settled. Town &
6 Country then expressed a desire to resolve the fee and cost issue shortly after the other settlement
7 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
8 compensation due to Dr. Held and his counsel under general contract principles and the private
9 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5. Town
10 & Country shall reimburse Dr. Held and his counsel a total of \$60,000 for fees and costs incurred as
11 a result of investigating, bringing this matter to Town & Country's attention, and litigating and
12 negotiating a settlement in the public interest. Not later than five (5) days following the execution
13 of this Consent Judgment by both parties, the fee and cost payment shall be made by Town &
14 Country to Hunton & Williams, to be held in a client Trust Account. Such fee and cost payment
15 shall remain in the Trust Account until this Consent Judgment has been entered by the Court.

16 Subject to the provisions below, the fee and cost payment held by Hunton & Williams shall
17 be delivered to the following address within two (2) business days of entry of this Consent
18 Judgment:

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

24 The foregoing notwithstanding, should the Court enter the Consent Judgment over an
25 objection, the payments made into the Trust Account required under Sections 3 and 4 shall be paid
26 within five (5) days after the Judgment becomes final, including any appeal. However, should the
27 parties revise the Consent Judgment prior to its entry by the Court in response to an objection such
28 that the objection is withdrawn prior to entry of the Consent Judgment, the timing of the payments
shall be due as if no objection has been filed.

1 **5. CLAIMS COVERED AND RELEASE**

2 **5.1 Dr. Held's Release of Town & Country**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
5 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
6 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
7 of legal action and releases all claims (including, without limitation, all actions, and causes of
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
9 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)
10 of any nature whatsoever, whether known or unknown, fixed or contingent) as to the listed chemical
11 in the Covered Products (collectively "Claims"), that were brought or could have been brought
12 against Town & Country or its parents, subsidiaries or affiliates, and all of their customers,
13 distributors, wholesalers, retailers, licensors, licensees, or any other person in the course of doing
14 business, and the successors and assigns of any of them, who may use, maintain, manufacture,
15 distribute, advertise, market or sell Covered Products, and the officers, directors, managers,
16 employees, members, shareholders, agents, insurers and representatives of each of them
17 (collectively "Defendant Releasees") in this Action. This release is intended to be a full, final, and
18 binding resolution of, those Claims that arise under Proposition 65, as against Town & Country and
19 Defendant Releasees, as such Claims relate to Town & Country's alleged failure to warn about
20 exposures to the listed chemical contained in the Covered Products.

21 The Parties further understand and agree that this release shall not extend upstream to any
22 entities that manufactured the Covered Products for Town & Country or any component parts
23 thereof or to any distributors or suppliers who sold the Covered Products or any component parts
24 thereof to Town & Country.

25 **5.2 Town & Country's Release of Dr. Held**

26 Town & Country waives any and all claims against Dr. Held, his attorneys, and other
27 representatives for any and all actions taken or statements made (or those that could have been
28 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter
2 with respect to the Covered Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all parties. If the Court does not approve the Consent Judgment,
7 the parties shall meet and confer as to (and jointly agree on) whether to modify the language or
8 appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case shall
9 proceed in its normal course on the trial court's calendar. In the event that this Consent Judgment is
10 entered by the Court and subsequently overturned by any appellate court or the motion to approve is
11 not ultimately granted, any monies that have been provided to Plaintiff, or his counsel pursuant to
12 Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision
13 becoming final. If the Court's approval is ultimately overturned by an appellate court, the parties
14 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
15 Judgment. If the parties do not jointly agree on a course of action to take, then the case shall
16 proceed in its normal course on the trial court's calendar.

17 **7. SEVERABILITY**

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

21 **8. ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement and understanding of the
23 parties with respect to the entire subject matter hereof, and any and all prior discussions,
24 negotiations, commitments, and understandings related hereto. No representations, oral or
25 otherwise, express or implied, other than those contained herein have been made by any party
26 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
27 to exist or to bind any of the parties.

28 **9. GOVERNING LAW**

1 The terms of this Consent Judgment shall be governed by the laws of the State of California
2 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
3 rendered inapplicable by reason of state or federal law generally, or as to the Covered Products,
4 then Town & Country shall provide written notice to Dr. Held of any asserted change in the law,
5 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
6 extent that, the Covered Products are so affected.

7 **10. NOTICES**

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

12 To Town & Country:

13 Marc Breslof, President
14 Town & Country Linen Corp.
15 475 Oberlin Ave South
16 Lakewood, NJ 08701

17 With Copies To:

18 Malcolm C. Weiss
19 Catherine Allen
20 Hunton & Williams LLP
21 550 South Hope Street
22 Suite 2000
23 Los Angeles, CA 90071

24 To Dr. Held:

25 Proposition 65 Coordinator
26 Hirst & Chanler, LLP
27 2560 Ninth Street
28 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

 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.

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a
10 noticed motion is required to obtain judicial approval of this Consent Judgment. Dr. Held and
11 Town & Country agree to mutually employ their best efforts to support the entry of this agreement
12 as a Consent Judgment by the trial court and defend the agreement against any appellate review.
13 Accordingly, Dr. Held agrees to file a motion to approve the Consent Judgment, and Town &
14 Country agrees to support it.

15 **14. MODIFICATION AND ATTORNEYS FEES**

16 This Consent Judgment may be modified only: (1) by written agreement of the parties and
17 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
18 of any party and entry of a modified Consent Judgment by the Court. In the event that, after
19 execution of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions of
20 this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
21 prevailing party shall be entitled to reasonable attorney's fees and costs.

22 **15. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment on behalf of their
24 respective parties and have read, understood, and agree to all of the terms and conditions of this
25 Consent Judgment.
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AGREED TO: APPROVED <i>By Anthony E Held at 8:56 am, 7/17/09</i>	AGREED TO: <i>7/20/09</i>
Date: _____	Date: _____
By: <i>Anthony E. Held</i> ANTHONY E. HELD, Ph.D., P.E.	By: <i>Marc Breslof</i> Marc Breslof, President TOWN & COUNTRY DINEN CORP.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT