

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held. Ph.D., P.E. and Franco Manufacturing Co., Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held. Ph.D.,
4 P.E. (“Held” or “Plaintiff”) and defendant Franco Manufacturing Co., Inc. (“Franco” or
5 “Defendant”), with Held and Franco collectively referred to as the “Parties.”

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Franco 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 &
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Held alleges that Franco has manufactured, distributed, sold, and/or offered for sale
16 pillows with vinyl components containing di(2-ethylhexyl)phthalate (“DEHP”), and vinyl
17 placemats containing DEHP for use in the State of California without the requisite Proposition 65
18 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
19 California to cause birth defects and other reproductive harm.

20 **1.5 Notices of Violation.**

21 1.5.1 On December 23, 2008, Held served Franco and various public enforcement
22 agencies with a document entitled “60-Day Notice of Violation,” (“Initial Notice”) that alleged
23 that Franco violated Proposition 65 by failing to warn consumers that pillows with vinyl
24 components containing DEHP including, but not limited to: *Nick Jr. Go, Diego, Go! Decorative*
25 *Pillow (#0 73558 49690 8), Finding Nemo Pillow*, exposed users in California to DEHP.

26 1.5.2 On September 15, 2009, Held served Franco and various public enforcement
27 agencies with a document entitled “Supplemental 60-Day Notice of Violation,” (“Supplemental
28 Notice”) that alleged that Franco violated Proposition 65 by failing to warn consumers that

1 various placemats containing DEHP including, but not limited to, *Placemat, Superman, #162VAA*
2 (*#0 73558 59369 0*), *Placemat, The Dark Knight, #159VPP (#0 73558 59369 0)*, *Placemat, Go*
3 *Diego Go! Animal Rescue #102UPP (#0 73558 55034 1)*, exposed users in California to DEHP.
4 The Initial Notice and the Supplemental Notice are hereinafter referred to collectively as the
5 “Notices.”

6 **1.6 Prior Settlement.**

7 On March 10, 2010, Held and Franco agreed to resolve the claims raised in the Notices by
8 way of an out-of-court settlement that provided for reformulation of Covered Products, as defined
9 below, and for payment of civil penalties and attorney’s fees. A true and correct copy of the
10 settlement (“Settlement Agreement”) is attached hereto as Exhibit A.

11 **1.7 Complaint.**

12 On August 22, 2013, at Franco’s request pursuant to Section 5.1 of the Settlement
13 Agreement, Held filed a complaint in this action (“Complaint”), naming Franco as a defendant,
14 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP
15 contained in vinyl pillows and placemats manufactured, distributed, sold, and/or offered for sale
16 by Franco.

17 **1.8 No Admission.**

18 The Parties enter into this Consent Judgment as a full and final settlement of all claims
19 that were raised in the Complaint or that could have been raised in the Complaint or the Notices
20 as to the Covered Products, defined below, arising out of the facts or conduct alleged therein. By
21 execution of this Consent Judgment and agreeing to comply with its terms, Franco does not admit
22 any facts or conclusions of law, including, but not limited to, any facts or conclusions of law
23 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
24 or equitable requirements relating to DEHP in Covered Products. Nothing in this Consent
25 Judgment shall be construed as an admission by Franco of any fact, conclusion of law, issue of
26 law or violation of law, nor shall compliance with the Consent Judgment constitute or be
27 construed as an admission by Franco of any fact, conclusion of law, issue of law, or violation of
28 law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,

1 argument or defense Franco may have in this or any other or future legal proceedings. This
2 Consent Judgment is the product of negotiation and compromise and is accepted by Franco for
3 purposes of settling, compromising, and resolving issues disputed in this action. However, this
4 section shall not diminish or otherwise affect the obligations, responsibilities and duties of Franco
5 under this Consent Judgment.

6 **1.9 Consent to Jurisdiction.**

7 For purposes of this Consent Judgment only, Franco stipulates that this Court has
8 jurisdiction over Franco as to the allegations contained in the Complaint, that venue is proper in
9 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
10 Consent Judgment.

11 **2. Definitions.**

12 2.1 "Covered Products" means (1) pillows with vinyl components containing DEHP
13 including, but not limited to: *Nick Jr. Go, Diego, Go! Decorative Pillow (#0 73558 49690 8)* and
14 *Finding Nemo Pillow*; and (2) vinyl placemats containing DEHP including, but not limited to:
15 *Placemat, Superman, #162VAA (#0 73558 59369 0)*; *Placemat, The Dark Knight, #159VPP (#0*
16 *73558 59369 0)*; *Placemat, Go Diego Go! Animal Rescue, # 102UPP (#0 73558 55034 1)* and
17 *Dora The Explorer Placemat, 100% Vinyl, RN # 22682,*.

18 2.2 "Effective Date" means the date this Consent Judgment is approved by the Court.

19 **3. INJUNCTIVE RELIEF: REFORMULATION**

20 3.1 Commencing on the Effective Date of the Settlement Agreement, March 1, 2010,
21 Franco shall only manufacture or cause to be manufactured Covered Products for sale in
22 California that are Phthalate Free, as set forth below. For purposes of this Consent Judgment,
23 "Phthalate Free" shall mean Covered Products containing less than or equal to 1,000 ppm of
24 DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method
25 allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

1 **4. ENFORCEMENT OF CONSENT JUDGMENT**

2 **4.1 General Enforcement Provisions.**

3 Any Party may, by motion or application for an order to show cause before the Superior
4 Court of the County of Alameda, enforce the terms and conditions contained in this Consent
5 Judgment. A Party may file such a motion or application only after that Party first provides 30
6 days notice to the Party allegedly failing to comply with the terms and conditions of this Consent
7 Judgment and attempts to resolve such Party's failure to comply in an open and good faith
8 manner for a period of no less than 30 days.

9 **5. MONETARY PAYMENTS**

10 **5.1 Payments Made Pursuant to Health & Safety Code §25249.7(b).**

11 Franco shall pay a civil penalty of \$4,000 pursuant to Health & Safety Code §25249.7(b),
12 to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these
13 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
14 ("OEHHA") and the remaining 25% of the amount remitted to Anthony Held as provided by
15 California Health & Safety Code §25249.12(d). Held and his counsel acknowledge that these
16 penalty payments have already been made by Franco pursuant to the Settlement Agreement.

17 **5.2 Reimbursement of Fees and Costs.**

18 5.2.1 The Parties reached an accord on the compensation due to Held and his
19 counsel under the private attorney general doctrine and contract law. Under these legal principles,
20 Franco shall reimburse Held's counsel for fees and costs incurred as a result of investigating,
21 bringing this matter to Franco' attention, and negotiating a settlement in the public interest.
22 Franco shall pay Held and his counsel \$26,000 for all attorneys' fees, expert and investigation
23 fees, and related costs. Held and his counsel acknowledge that this fee and cost payment has
24 already been made by Franco pursuant to the Settlement Agreement.

25 5.2.2 Pursuant to Section 5.1 of the Settlement Agreement, Franco will reimburse
26 Held and his counsel for their reasonable fees and costs incurred in filing the complaint and
27 seeking judicial approval of this Consent Judgment incorporating the terms of the Settlement
28 Agreement, in an amount not to exceed \$10,000; provided, however, that the cap on fees and

1 costs shall not apply if there is an objection to the Consent Judgment or an attempted or
2 successful intervention by any other person seeking to act in the public interest.

3 **6. CLAIMS COVERED AND RELEASE**

4 6.1 In further consideration of the promises and agreements herein contained, and for
5 the payments to be made pursuant to Sections 5.1 and 5.2 above, Held, on behalf of himself: his
6 past and current agents, representatives, attorneys, including, without limitation, Chanler Law
7 Group, successors and/or assignees, and in the interest of the general public, hereby waives all
8 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
9 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
10 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,
11 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,
12 whether known or unknown, fixed or contingent (collectively "Claims"), against Franco and each
13 of its downstream distributors, wholesalers, licensors, auctioneers, retailers, franchisees, dealers,
14 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and
15 their respective officers, directors, attorneys, representatives, shareholders, agents and employees,
16 and sister and parent entities (collectively "Franco Releasees"). This release is limited to those
17 claims that arise under Proposition 65, as such claims relate to Franco's alleged failure to warn
18 about exposures to or identification of DEHP contained in the Covered Products.

19 6.2 This Consent Judgment is a full, final, and binding resolution between Held, on
20 behalf of himself and in the public interest and Franco and Franco Releasees, of any violation of
21 Proposition 65 regarding the failure to warn about exposure to DEHP from Covered Products
22 manufactured, sourced, distributed, sold, offered for sale by Franco and Franco Releasees prior to
23 the Effective Date, and is intended to have the fullest res judicata effect available under
24 applicable law.

25 6.3 Compliance with the terms of this Consent Judgment by Franco and Franco
26 Releasees constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

27 6.4 Held also, in his individual capacity only and *not* in his representative capacity,
28 provides a general release herein which shall be effective as a full and final accord and

1 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
2 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether
3 known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual
4 exposures to DEHP pursuant to Proposition 65 in the Covered Products manufactured,
5 distributed, sold or offered for sale by Franco and Franco Releasees. Held acknowledges that he
6 is familiar with Section 1542 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
10 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
11 HER SETTLEMENT WITH THE DEBTOR.

12 Held, expressly waives and relinquishes any and all rights and benefits which he may have
13 under, or which may be conferred on him by the provisions of Section 1542 of the California
14 Civil Code as well as under any other state or federal statute or common law principle of similar
15 effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the
16 alleged exposures to DEHP from the Covered Products sold by Franco in California before the
17 Effective Date. In furtherance of such intention, the release hereby given shall be and remain in
18 effect as a full and complete release notwithstanding the discovery or existence of any such
19 additional or different claims or facts arising out of alleged or actual exposure now or in the
20 future to DEHP in the Covered Products manufactured, imported, distributed, sold or offered for
21 sale by Franco, that could otherwise be made against Franco, Defendant Releasees, and
22 Downstream Defendant Releasees.

23 6.5 Franco on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees, hereby waives any and all Claims against Held, his attorneys, and
25 other representatives for any and all actions taken or statements made (or those that could have
26 been taken or made) by Held and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter
28 with respect to the Covered Products.

1 Franco also provides a general release herein which shall be effective as a full and final
2 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
3 attorneys' fees, damages, losses claims, liabilities and demands of Franco of any nature,
4 character or kind, known or unknown, suspected or unsuspected, limited to and arising out of
5 alleged or actual exposures to DEHP pursuant to Proposition 65 in the Covered Products
6 manufactured, distributed, sold and/or offered for sale by Franco and Franco Releasees. Franco
7 acknowledges that it is familiar with Section 1542 of the California Civil Code which provides
8 as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
12 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
13 HER SETTLEMENT WITH THE DEBTOR.

14 Franco expressly waives and relinquishes any and all rights and benefits which it may
15 have under, or which may be conferred on it by, the provisions of Section 1542 of the California
16 Civil Code as well as under any other state of federal statute or common law principle of similar
17 effect, to the fullest extent that Franco may lawfully waive such rights or benefits pertaining to
18 alleged exposures to DEHP from the Covered Products sold by Franco in California before the
19 Effective Date..

20 7. COURT APPROVAL

21 7.1 Franco shall draft, and the parties shall jointly file a motion seeking approval of
22 this Consent Judgment pursuant to California Health & Safety Code §25249.7(f).

23 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
24 and any and all prior agreements between the Parties merged herein shall terminate and become
25 null and void, and the action shall revert to the status that existed prior to the execution date of
26 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
27 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
28 have any effect, nor shall any such matter be admissible in evidence for any purpose in this

1 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
2 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **8. ATTORNEYS' FEES**

4 8.1 Except as specifically provided in Section 5.2, and if a third party elects to appeal
5 the approval of the Consent Judgment, each Party shall bear its own costs and attorney's fees in
6 connection with this action.

7 **9. GOVERNING LAW**

8 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California, and shall apply only to Covered Products offered for sale in the State of California. In
10 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
11 generally, or as to the Covered Products, then Franco may provide written notice to Held of any
12 asserted change in the law, and shall have no further obligations pursuant to this Consent
13 Judgment with respect to, and to the extent that, the Covered Products are so affected.

14 9.2 The Parties, including their counsel, have participated in the preparation of this
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
18 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
19 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
20 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
21 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
22 this regard, the Parties hereby waive California Civil Code § 1654.

23 **10. NOTICES**

24 10.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
26 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
27 Party by the other Party at the following addresses:

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To Franco:

Michael Kaplan, Chief Financial Officer
Franco Manufacturing Co., Inc.
555 Prospect Street
Metuchen, NJ 08840

With a copy to:

Jeffrey B. Margulies, Esq.
Fulbright & Jaworski LLP
555 South Flower Street
41st Floor
Los Angeles, CA 90071
213-892-9286
213-892-9494 fax
jmargulies@fulbright.com

To Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

10.2 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.

11. MODIFICATION

11.1 **Modification.** This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

11.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the DEHP content of Covered Products sold in California, any Party shall be entitled to request that the Court modify the reformulation standard of Section 3.1 of this Consent Judgment for good cause shown.

11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. No supplementation, modification, waiver, or termination of this Consent Judgment
6 shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of
7 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
8 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
9 waiver.

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

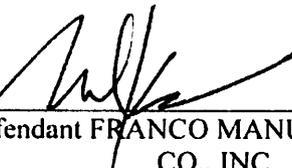
13 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

14 14.1 This Consent Judgment may be executed in counterparts and by facsimile or
15 portable document format (.pdf), each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document.

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1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
3 their respective Parties and have read, understood, and agree to all of the terms and conditions of
4 this Consent Judgment.
5

AGREED TO:	AGREED TO:
Date: _____	Date: <u>8/8/13</u>
By: _____ Plaintiff ANTHONY HELD	By:  Defendant FRANCO MANUFACTURING CO., INC.

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14 **IT IS SO ORDERED.**

15 Date: _____

16 _____
17 JUDGE OF THE SUPERIOR COURT
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15. AUTHORIZATION

15.1 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 of this Consent Judgment.

AGREED TO:	AGREED TO:
Date: <u>9/16/2013</u>	Date: _____
By: <u><i>Anthony E Held</i></u> Plaintiff ANTHONY HELD	By: _____ Defendant FRANCO MANUFACTURING CO., INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT