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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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11 ANTHONY E. HELD, PH.D., P.E.,) Case No. CGC-09-488165
12)
Plaintiff,) (PROPOSED)
13) CONSENT JUDGMENT
v.)
14)
MEADWESTVACO CORPORATION, et al.,)
15)
Defendant.)
16)
17)
18)

19 **1. INTRODUCTION**

20 **1.1 Anthony E. Held, Ph.D., P.E., and MeadWestvaco Corporation**

21 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,
22 P.E. (“Dr. Held” or “Plaintiff”) and Defendant MeadWestvaco Corporation (“MWV” or
23 “Defendant”), with Plaintiff and Defendant collectively referred to as the “parties.”

24 **1.2 Plaintiff**

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

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1.3 Defendant

MWV employs 10 or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Held alleges that MWV has manufactured, distributed and/or sold children’s vinyl zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is a phthalate that is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

1.5 Notice of Violation

On January 26, 2009, Dr. Held served MWV, Kmart Corporation (“Kmart”), and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers that children’s vinyl zipper pulls that MWV manufactured, distributed and/or sold exposed users in California to DEHP. Following receipt of the Notice, on or about February 11, 2009, Kmart stopped selling the vinyl zipper pull products referenced in the Notice. To the best of the parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.6 Complaint

On May 7, 2009, Dr. Held, acting in the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of San Francisco against MWV, Kmart and Does 1 through 150, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl zipper pulls manufactured, distributed and/or sold by MWV.

1.7 No Admission

MWV denies the material, factual and legal allegations contained in Dr. Held’s Notice and Complaint and maintains that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent

1 Judgment shall be construed as an admission by MWV of any fact, finding, issue of law, or
2 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
3 an admission by MWV of any fact, finding, conclusion, issue of law, or violation of law, such
4 being specifically denied by MWV. However, this Section shall not diminish or otherwise affect
5 MWV's obligations, responsibilities, and duties under this Consent Judgment.

6 **1.8 Consent to Jurisdiction**

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

11 **1.9 Product Description**

12 The term "Covered Products" means school supplies manufactured, distributed, and/or
13 sold by MWV that contain vinyl zipper pulls.

14 **1.10 Effective Date**

15 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
16 consent judgment is entered by the court.

17 **2. INJUNCTIVE RELIEF: REFORMULATION**

18 **2.1** Commencing on August 7, 2009, MWV shall not sell, ship, or offer to be shipped
19 for sale in California any Covered Product with a vinyl zipper pull that contains more than 1,000
20 parts per million ("ppm") of DEHP.

21 **2.2** Defendant may employ any methodology accepted by a federal or state agency for
22 establishing DEHP content in Covered Products.

23 **3. MONETARY PAYMENTS**

24 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

25 3.1.1 In settlement of all claims related to the Covered Products and Listed
26 Chemical referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety
27 Code § 25249.7(b), MWV shall pay \$5,000.00 in civil penalties.

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1 3.1.2 Civil penalties are to be apportioned in accordance with California Health
2 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
3 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
4 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). MWV
5 shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &
6 Chanler LLP in Trust for OEHHA" in the amount of \$3,750.00, representing 75% of the total
7 penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of
8 \$1,250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the
9 above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and
10 (b) Anthony Held, whose information shall be provided five calendar days before the payment is
11 due.

12 3.1.3 Payment shall be delivered to Dr. Held's counsel within five business days
13 of the Effective Date, at the following address:

14 Hirst & Chanler LLP
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

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

18 **4.1 Attorney Fees and Costs**

19 Pursuant to the private attorney general doctrine codified at California Code of Civil
20 Procedure (C.C.P.) § 1021.5, MWV shall reimburse Dr. Held and his counsel a total of
21 \$40,000.00 for fees and costs incurred as a result of investigating, bringing this matter to MWV's
22 attention, and litigating and negotiating a settlement in the public interest. MWV shall issue a
23 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst
24 & Chanler LLP" and shall be delivered within five business days of the Effective Date.

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

1 **5. CLAIMS COVERED AND RELEASE**

2 **5.1 Claims Covered**

3 5.1.1 This Consent Judgment is a full, final, and binding resolution between Dr.
4 Held, on behalf of himself, his past and current agents, representatives, attorneys, successors,
5 and/or assignees, and the general public, and MWV, its parents, shareholders, divisions,
6 subdivisions, subsidiaries, affiliates, partners, sister companies, employees, directors, insurers,
7 and attorneys and their successors and assigns (“Defendant Releasees”), and all entities to whom
8 they have distributed or sold, or may hereafter distribute or sell, Covered Products, including but
9 not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,
10 and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any
11 other statutory or common law claims that have been or could have been asserted in the
12 Complaint against MWV, Defendant Releasees, and Downstream Defendant Releasees
13 (collectively “Releasees”), regarding the presence of, or the failure to warn about exposure to, the
14 Listed Chemical in Covered Products manufactured, distributed, or sold by MWV prior to the
15 Effective Date.

16 5.1.2 Compliance with the terms of this Consent Judgment by MWV and
17 Defendant Releasees after the Effective Date constitutes compliance with Proposition 65
18 regarding the presence of, and the failure to warn about exposure to, the Listed Chemical in
19 Covered Products manufactured, distributed or sold by MWV after the Effective Date.

20 **5.2 Dr. Held’s Release of MWV, and its Chain of Distribution**

21 5.2.1 In further consideration of the promises and agreements herein contained,
22 the injunctive relief commitments set forth in Section 2, and for the payments to be made
23 pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents,
24 representatives, attorneys, successors, and/or assignees, and the general public, hereby waives
25 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any
26 form of legal action and releases all claims, including, without limitation, all actions, and causes
27 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
28 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and

1 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
2 (collectively "claims"), against Releasees that arise under Proposition 65 or any other statutory or
3 common law claims that were or could have been asserted in the public interest, as such claims
4 relate to the Releasees' alleged failure to warn about exposures to the Listed Chemical contained
5 in the Covered Products.

6 5.2.2 Dr. Held also, in his individual capacity only and not in his representative
7 capacity, provides a general release which shall be effective as a full and final accord and
8 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
9 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
10 known or unknown, suspected or unsuspected, against Releasees, arising out of the subject matter
11 of the Action or related to alleged exposure to DEHP from products manufactured, distributed, or
12 sold by MWV. Dr. Held acknowledges that he is familiar with Section 1542 of the California
13 Civil Code, which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
18 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
19 DEBTOR.

20 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives
21 and relinquishes any and all rights and benefits which he may have under, or which may be
22 conferred on him by, the provisions of Section 1542 of the California Civil Code as well as under
23 any other state or federal statute or common law principle of similar effect, to the fullest extent
24 that he may lawfully waive such rights or benefits pertaining to the Releasees' alleged failure to
25 warn about exposures to the Listed Chemical contained in products manufactured, distributed, or
26 sold by MWV. In furtherance of such intention, the release hereby given shall be and remain in
27 effect as a full and complete release notwithstanding the discovery or existence of any such
28 additional or different claims or facts arising out of the released matters.

5.2.3 The parties further understand and agree that this release shall not extend
upstream to any entities that manufactured the Covered Products or any component parts thereof,

1 or any distributors or suppliers who sold the Covered Products or any component parts thereof to
2 MWV.

3 **5.3 MWV's Release of Dr. Held**

4 MWV waives any and all claims against Dr. Held, his attorneys, and other representatives
5 for any and all actions taken or statements made (or those that could have been taken or made) by
6 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims
7 or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
8 respect to the Covered Products, as of the Effective Date.

9 **6. COURT APPROVAL**

10 **6.1** This Consent Judgment is not effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
12 within nine months after it has been fully executed by all parties.

13 **6.2** Upon court approval of the Consent Judgment, the Parties waive their respective
14 rights to a hearing or trial on the allegations of the complaint.

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California. To the extent that any Covered Product is subject to a state or federal law applicable
18 to the DEHP content of the products, including but not limited to the Consumer Product Safety
19 Improvement Act of 2008, nothing in this Consent Judgment shall alter or amend the application
20 of such state or federal law.

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1 **8. NOTICES**

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

6 To MWV:
7 John H. Beasley
8 Assistant General Counsel
9 MeadWestvaco Corporation
 11013 W. Broad Street
 Glen Allen, VA 23060

10 With a copy to:
11 Jeffrey Margulies, Esq.
12 Fulbright & Jaworski, LLP
13 555 South Flower Street
 41st Floor
 Los Angeles, CA 90071

14 To Dr. Held:
15 Hirst & Chanler LLP
16 Attn: Proposition 65 Coordinator
 2560 Ninth Street, Suite 214
 Berkeley, CA 94710

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

19 **9. COUNTERPARTS, FACSIMILE SIGNATURES**

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

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

24 Dr. Held agrees to comply with the reporting form requirements referenced in California
25 Health & Safety Code §25249.7(f).
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1 **11. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties; or
3 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
4 Court.

5 **12. ATTORNEY'S FEES**

6 **12.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
7 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
8 unless the unsuccessful Party has acted with substantial justification. For purposes of this
9 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
10 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

11 **12.2** Except as specifically provided in the above paragraph and in Section 4.1, each
12 Party shall bear its own costs and attorney's fees in connection with this action.

13 **12.3** Nothing in this Section 12 shall preclude a Party from seeking an award of
14 sanctions pursuant to law.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective parties and have read, understood, and agree to all of the terms and conditions of this
18 Consent Judgment.

19 **AGREED TO:**

AGREED TO:

20 Date: August __, 2009

Date: August 7, 2009

21 By: _____

22 By:  _____

23 Plaintiff, Anthony E. Held, Ph.D., P.E.

24 Defendant, MeadWestvaco Corporation

25 *D. J. KROUSKOP*
26 *VICE-PRESIDENT, SAFETY*
27 *HEALTH AND ENVIRONMENT*

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17 respective parties and have read, understood, and agree to all of the terms and conditions of this
18 Consent Judgment.

19 **AGREED TO:**

AGREED TO:

20 Date: **APPROVED**
21 *By Anthony E Held at 5:49 pm, 8/10/09*

Date: August __, 2009

22
23 By: *Anthony E Held*
24 Plaintiff, Anthony E. Held, Ph.D., P.E.

By: _____
Defendant, MeadWestvaco Corporation