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

10
11 ANTHONY E. HELD, PH.D., P.E.,)

12 Plaintiff,)

13 v.)

14 NEWELL RUBBERMAID INC., SANFORD,)
15 L.P.,)

16 Defendants.)
17)
18)

Case No. CGC-09-491273

(PROPOSED)
CONSENT JUDGMENT

19 **1. INTRODUCTION**

20 **1.1 The Parties**

21 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,
22 P.E. ("Dr. Held" or "Plaintiff") and Defendants Newell Rubbermaid Inc. and Sanford, L.P.
23 (collectively "Newell Rubbermaid" or "Defendant"), with Plaintiff and Defendant collectively
24 referred to as the "Parties."
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1 **1.2 Plaintiff**

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

5 **1.3 Defendant**

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

9 **1.4 General Allegations**

10 Dr. Held alleges that Newell Rubbermaid has manufactured, distributed and/or sold
11 children’s vinyl bags marketed as school supplies, such as the Sanford Brands Rubbermaid
12 SpaceMaker #1737358 containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
13 Proposition 65 warnings. DEHP is a phthalate that is listed as a reproductive and developmental
14 toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

15 **1.5 Notice of Violation**

16 On January 26, 2009, Dr. Held served Newell Rubbermaid and various public
17 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that
18 provided public enforcers and these entities with notice of alleged violations of Health & Safety
19 Code § 25249.6 for failing to warn consumers that children’s vinyl bags such as the Sanford
20 Brands Rubbermaid SpaceMaker #1737358 that Newell Rubbermaid manufactured, distributed
21 and/or sold exposed users in California to DEHP. To the best of the parties’ knowledge, no
22 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
23 Notice.

24 **1.6 Complaint**

25 On August 10, 2009, Dr. Held, acting in the interest of the general public in California,
26 filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of San
27 Francisco against Newell Rubbermaid, alleging violations of Health & Safety Code § 25249.6
28 based on the alleged exposures to DEHP contained in children’s vinyl bags such as the Sanford

1 Brands Rubbermaid SpaceMaker #1737358 manufactured, distributed and/or sold by Newell
2 Rubbermaid.

3 **1.7 No Admission**

4 Newell Rubbermaid denies the material, factual and legal allegations contained in Dr.
5 Held's Notice and Complaint and maintains that all Covered Products it has manufactured,
6 distributed and/or sold in California have been and are in compliance with all applicable laws.
7 Nothing in this Consent Judgment shall be construed as an admission by Newell Rubbermaid of
8 any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent
9 Judgment constitute or be construed as an admission by Newell Rubbermaid of any fact, finding,
10 conclusion, issue of law, or violation of law, such being specifically denied by Newell
11 Rubbermaid. However, this Section shall not diminish or otherwise affect Newell Rubbermaid's
12 obligations, responsibilities, and duties under this Consent Judgment.

13 **1.8 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the parties stipulate that this Court has
15 jurisdiction over Newell Rubbermaid as to the allegations contained in the Complaint, that venue
16 is proper in the County of San Francisco and that this Court has jurisdiction to enter and enforce
17 the provisions of this Consent Judgment.

18 **1.9 Product Description**

19 The term "Covered Products" means children's vinyl bags marketed as school supplies
20 manufactured, distributed, and/or sold by Newell Rubbermaid.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
23 Consent Judgment is entered by the court.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1** Commencing on August 30, 2009, Newell Rubbermaid shall not sell, ship, or offer
3 to be shipped for sale in California any Covered Product that contains more than 1,000 parts per
4 million (“ppm”) of DEHP.

5 **2.2** Defendant may employ any methodology accepted by a federal or state agency for
6 establishing DEHP content in Covered Products.

7 **3. MONETARY PAYMENTS**

8 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

9 3.1.1 In settlement of all claims related to the Covered Products and Listed
10 Chemical referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety
11 Code § 25249.7(b), Newell Rubbermaid shall pay \$16,000.00 in civil penalties.

12 3.1.2 Civil penalties are to be apportioned in accordance with California Health
13 & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
14 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
15 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Newell
16 Rubbermaid shall issue two separate checks for the penalty payment: (a) one check made payable
17 to “Hirst & Chanler LLP in Trust for OEHHA” in the amount of \$12,000.00, representing 75% of
18 the total penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the
19 amount of \$4,000.00, representing 25% of the total penalty. Two separate 1099s shall be issued
20 for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
21 0284486); and (b) Anthony Held, whose information shall be provided five calendar days before
22 the payment is due.

23 3.1.3 Payment shall be delivered to Dr. Held’s counsel within 10 days of the
24 Effective Date, at the following address:

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 Pursuant to the private attorney general doctrine codified at California Code of Civil
4 Procedure § 1021.5, Newell Rubbermaid shall reimburse Dr. Held and his counsel a total of
5 \$41,500.00 for fees and costs incurred as a result of investigating, bringing this matter to Newell
6 Rubbermaid's attention, and litigating and negotiating a settlement in the public interest. Newell
7 Rubbermaid shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the
8 check payable to "Hirst & Chanler LLP" and shall be delivered within 10 days of the Effective
9 Date.

10 Hirst & Chanler LLP
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

13 **5. CLAIMS COVERED AND RELEASE**

14 **5.1 Claims Covered**

15 This Consent Judgment is a full, final, and binding resolution between Dr. Held, on behalf
16 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,
17 and the general public, and Newell Rubbermaid, its parents, shareholders, divisions, subdivisions,
18 subsidiaries, affiliates, partners, sister companies, employees, directors, insurers, and attorneys
19 and their successors and assigns ("Defendant Releasees"), and all entities to whom they distribute
20 or sell Covered Products, including but not limited to distributors, wholesalers, customers,
21 retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"),
22 of any violation of Proposition 65 or any other statutory or common law claims that have been or
23 could have been asserted in the Complaint against Newell Rubbermaid, Defendant Releasees, and
24 Downstream Defendant Releasees (collectively "Releasees"), regarding the presence of, or the
25 failure to warn about exposure to, the Listed Chemical in Covered Products manufactured,
26 distributed, or sold by Newell Rubbermaid prior to the Effective Date. Compliance with the
27 terms of this Consent Judgment by Newell Rubbermaid and Defendant Releasees after the
28 Effective Date constitutes compliance with Proposition 65 regarding the presence of, and the

1 failure to warn about exposure to, the Listed Chemical in Covered Products manufactured,
2 distributed or sold by Newell Rubbermaid after the Effective Date.

3 **5.2 Dr. Held's Release of Newell Rubbermaid, and its Chain of Distribution**

4 5.2.1 In further consideration of the promises and agreements herein contained,
5 the injunctive relief commitments set forth in Section 2, and for the payments to be made
6 pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents,
7 representatives, attorneys, successors, and/or assignees, and the general public, hereby waives
8 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any
9 form of legal action and releases all claims, including, without limitation, all actions, and causes
10 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
13 (collectively "claims"), against Releasees that arise under Proposition 65 or any other statutory or
14 common law claims that were or could have been asserted in the public interest, as such claims
15 relate to the Releasees' alleged failure to warn about exposures to the Listed Chemical contained
16 in the Covered Products.

17 5.2.2 Dr. Held also, in his individual capacity only and not in his representative
18 capacity, provides a general release herein which shall be effective as a full and final accord and
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
20 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
21 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Dr.
22 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
23 provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
27 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
28 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

1 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives
2 and relinquishes any and all rights and benefits which he may have under, or which may be
3 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under
4 any other state or federal statute or common law principle of similar effect, to the fullest extent
5 that he may lawfully waive such rights or benefits pertaining to the released matters. In
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
7 complete release notwithstanding the discovery or existence of any such additional or different
8 claims or facts arising out of the released matters.

9 5.2.3 The parties further understand and agree that this release shall not extend
10 upstream to any entities that manufactured the Covered Products or any component parts thereof,
11 or any distributors or suppliers who sold the Covered Products or any component parts thereof to
12 Newell Rubbermaid.

13 **5.3 Newell Rubbermaid's Release of Dr. Held**

14 Newell Rubbermaid waives any and all claims against Dr. Held, his attorneys, and other
15 representatives for any and all actions taken or statements made (or those that could have been
16 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
18 matter, and/or with respect to the Covered Products, as of the Effective Date.

19 **6. COURT APPROVAL**

20 **6.1** This Consent Judgment is not effective until it is approved and entered by the
21 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
22 within nine months after it has been fully executed by all parties.

23 **6.2** Upon court approval of the Consent Judgment, the Parties waive their respective
24 rights to a hearing or trial on the allegations of the complaint.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California.

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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 Newell Rubbermaid:

7 Brad Turner
8 Group Vice President & General Counsel
9 Newell Rubbermaid
 3 Glenlake Parkway
 Atlanta, GA 30328

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
17 2560 Ninth Street, Suite 214
 Berkeley, CA 94710

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

20 **9. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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

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

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1 **11. ENTIRE AGREEMENT**

2 **11.1** 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 There are no warranties, representations, or other agreements between the Parties except as
6 expressly set forth herein. No representations, oral or otherwise, express or implied, other than
7 those specifically referred to in this Consent Judgment have been made by any Party hereto. No
8 other agreements not specifically contained or referenced herein, oral or otherwise, shall be
9 deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver,
10 or termination of this Consent Judgment shall be binding unless executed in writing by the Party
11 to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be
12 deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar,
13 nor shall such waiver constitute a continuing waiver.

14 **12. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
16 (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the
17 Court.

18 **13. ATTORNEY'S FEES**

19 **13.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
20 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
21 unless the unsuccessful Party has acted with substantial justification. For purposes of this
22 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
23 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

24 **13.2** Except as specifically provided in the above paragraph and in Section 4.1, each
25 Party shall bear its own costs and attorney's fees in connection with this action.

26 **13.3** Nothing in this Section 13 shall preclude a Party from seeking an award of
27 sanctions pursuant to law.

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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:**

7 Date: September 16, 2009

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

AGREED TO:

Date: September __, 2009

By: _____
Dale L. Matschullat, Senior Vice President
and General Counsel
Defendants, Newell Rubbermaid Inc.,
Sanford L.P. (by Newell Operating
Company, its General Partner)

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15 **IT IS SO ORDERED.**

16 Dated: _____

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18 By _____

19 Judge of the Superior 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 of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: September __, 2009

Date: September 16, 2009

By: _____
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: 
Dale L. Matschullat, Senior Vice President
and General Counsel
Defendants, Newell Rubbermaid Inc.,
Sanford L.P. (by Newell Operating
Company, its General Partner)

IT IS SO ORDERED.

Dated: _____

By _____
Judge of the Superior Court