

1 Clifford A. Chanler, State Bar No. 135534
David Lavine, State Bar No. 166744
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 THE CITY AND COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
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13 ANTHONY E. HELD, Ph.D., P.E.,
14 Plaintiff,
15 v.
16 RUBIES COSTUME COMPANY, INC.; and
DOES 1-150, inclusive,
17 Defendants.

Case No. CIV093325
**[PROPOSED] CONSENT
JUDGMENT**
Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Rubies Costume Company, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Rubies Costume Company, Inc. (hereinafter “Rubies Costume
5 Company”), with Dr. Held and Rubies Costume Company collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that Rubies Costume Company has manufactured, distributed and/or sold in
16 the State of California children’s costumes containing di(2 ethylhexyl)phthalate (“DEHP”). DEHP is
17 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
18 Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California to
19 cause birth defects and other reproductive harm. DEHP is referred to herein as the “Listed
20 Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: children’s
23 costumes and accessories containing the Listed Chemical, including, but not limited to: (1) *Yarn*
24 *Babies Caribbean Pirate #11739 (#0 82686 11739 5)*. All such items shall be referred to herein as
25 the “Products.”
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1.6 Notices of Violation

On January 26, 2009 and June 30, 2009, Dr. Held served Rubies Costume Company and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided Rubies Costume Company and such public enforcers with notice that alleged that Rubies Costume Company was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products, apparel, gloves and toys with vinyl components exposed users in California to DEHP.

1.7 Complaint

On July 2, 2009, Dr. Held, who was and is acting in the interest of the general public in California, filed a complaint in the Marin County Superior Court, naming Rubies Costume Company, Inc. as a defendant and alleging violations of Health & Safety Code §25249.6 by Rubies Costume Company based on the alleged exposures to DEHP contained in the costumes with vinyl components manufactured, distributed and/or offered for sale in California by Rubies Costume Company (“Complaint”). Should no public prosecutor diligently prosecute the new claims during the sixty-day waiting period of the June 30, 2009 notice, the Complaint shall be deemed amended to include apparel, gloves and toys with vinyl components including, but not limited to, (1) *Batman Child Gauntlets #8151 (0 82686 08151 1)*; (2) *Inflatable Pumpkin Bean Bag Toss Game #57403 (7 21773 57403 0)*; and (3) *Lil' All Stars! Lil' Slugger #11278, (0 82686 11278 9)*.

1.8 No Admission

Rubies Costume Company denies the material, factual, and legal allegations contained in Dr. Held’s Notice and maintains that all products that it has manufactured, distributed and/or sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Rubies Costume Company of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Rubies Costume Company of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Rubies Costume Company. However,

1 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of
2 Rubies Costume Company under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the parties stipulate that this Court has
5 jurisdiction over Rubies Costume Company as to the allegations contained in the Complaint, that
6 venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
7 provisions of this Consent Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 21,
10 2009.

11 **2. INJUNCTIVE RELIEF: REFORMULATION**

12 **2.1 Reformulation Commitment**

13 After the Effective Date, Rubie's Costume Company shall only ship Products for sale in
14 California that are Phthalate Free, as set forth below. For purposes of this Settlement Agreement,
15 "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million
16 ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency
17 ("EPA") testing methodologies 3580A and 8270C or any method allowed by the U.S. Consumer
18 Product Safety Commission to test for the presence of DEHP.

19 **3. MONETARY PAYMENTS**

20 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

21 In settlement of all claims related to the Products and Listed Chemical referred to in the
22 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Rubies
23 Costume Company shall pay \$4,000 in civil penalties.

24 Civil penalties are to be apportioned in accordance with California Health & Safety Code §
25 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
26 Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as
27 provided by California Health & Safety Code §25249.12(d). Rubies Costume Company shall issue
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1 two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP
2 in Trust for OEHHA" in the amount of \$3,000, representing 75% of the total penalty; and (b) one
3 check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$1,000, representing
4 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA,
5 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
6 information shall be provided five calendar days before the payment is due.

7 Payment shall be delivered to Dr. Held's counsel on or before September 30, 2009, at the
8 following address:

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

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

13 **4.1 Attorney Fees and Costs.**

14 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. Rubies Costume
17 Company then expressed a desire to resolve the fee and cost issue shortly after the other settlement
18 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
19 compensation due to Dr. Held and his counsel under general contract principles and the private
20 attorney general doctrine codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all
21 work performed through the mutual execution of this agreement. Rubies Costume Company, on
22 behalf of itself and those in its chain of distribution, shall reimburse Dr. Held and his counsel a total
23 of \$28,500 for fees and costs incurred as a result of investigating, bringing this matter to Rubies
24 Costume Company's attention, and litigating and negotiating a settlement in the public interest.
25 Rubies Costume Company shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and
26 shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before
27 September 30, 2009.
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1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Dr. Held's Release of Rubies Costume Company**

8 In further consideration of the promises and agreements herein contained, and for the
9 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
10 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
11 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
12 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
13 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
14 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
15 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
16 Rubies Costume Company and each of its downstream distributors, wholesalers, licensors, licensees,
17 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
18 corporate affiliates, subsidiaries (including, but not limited to, Forum Novelties, Inc.), and their
19 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
20 sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise
21 under Proposition 65, as such claims relate to Rubies Costume Company's alleged failure to warn
22 about exposures to or identification of DEHP contained in the Products.

23 In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents,
24 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
26 and releases all Claims against Rubie's Costume Company and each of its Releasees. This additional
27 release, which Dr. Held is providing in his individual capacity, is limited to those Claims that arise
28 with respect to Proposition 65, as such Claims relate to Rubie's Costume Company's alleged failure

1 to warn about exposures to or identification of any chemicals listed under Proposition 65 contained in
2 any products sold by Rubie's Costume Company.

3 **5.2 Rubies Costume Company Release of Dr. Held**

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

9 **6. COURT APPROVAL**

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

16 **7. SEVERABILITY**

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

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
23 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Rubies
24 Costume Company provide written notice to Dr. Held of any asserted change in the law, and shall
25 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
26 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Rubies
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1 Costume Company from any obligation to comply with any pertinent state or federal toxics control
2 laws.

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 For Rubies Costume Company:

9 Marc Beige, President
10 Rubie's Costume Company, Inc.
11 1 Ruby Plaza
12 Richmond Hill, NY 11418

11 With Copies to:

12 Frederick Locker
13 Locker Greenberg & Brainin PC
14 Attorneys At Law
15 420 Fifth Avenue
16 New York NY 10018

16 For Dr. Held:

17 Proposition 65 Coordinator
18 Hirst & Chanler, LLP
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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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).

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Rubies Costume Company and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers in support of the required motion for judicial approval.

13. MODIFICATION

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

AGREED TO:

AGREED TO:

Date: September 21, 2009

Date: _____

By: *Anthony E. Held*
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Marc Beige, President
RUBIES COSTUME COMPANY, INC.

IT IS SO ORDERED.

Date: _____

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 hereof.

AGREED TO:

AGREED TO:

Date: _____

Date: 9 / 22 / 09

By: _____
ANTHONY E. HELD, Ph.D., P.E.

By: Marc Beige
Marc Beige, President
RUBIES COSTUME COMPANY, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT