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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 THE CITY AND COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

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

14 Plaintiff,

15 v.

16 RUBIES COSTUME COMPANY, INC.; and
17 DOES 1-150, inclusive,

18 Defendants.
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Case No. CIV 093325

**[PROPOSED] MODIFIED
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 Modified Consent Judgment is entered into by and between Anthony E. Held, Ph.D.,
4 P.E. (hereinafter “Dr. Held”) and Rubies Costume Company, Inc. (hereinafter “Rubies Costume”),
5 with Dr. Held and Rubies Costume 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 employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Rubies Costume has manufactured, distributed and/or sold in the State of
16 California children’s costumes and accessories containing: di(2 ethylhexyl)phthalate (“DEHP”);
17 antimony; arsenic; cadmium; chromium; lead; mercury; selenium; and formaldehyde. Antimony,
18 chromium, formaldehyde and selenium are listed pursuant to the Safe Drinking Water and Toxic
19 Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as
20 chemicals known to the State of California to cause cancer. Mercury is listed pursuant to Proposition
21 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.
22 Arsenic, DEHP, cadmium and lead are listed pursuant to Proposition 65 as chemicals known to the
23 State of California to cause cancer and birth defects and other reproductive harm. DEHP, antimony,
24 arsenic, cadmium, chromium, lead, mercury, selenium and formaldehyde are referred to herein as the
25 “Listed Chemicals.”

1 **1.5 Product Description**

2 The products that are covered by this Modified Consent Judgment are defined as follows:
3 Halloween costumes and Halloween accessories — including, but not limited to, Halloween props
4 (also known as “stage props,” and “theatrical properties”), home décor, plastic swords, costume
5 jewelry, make-up, wigs, masks, footwear, bags, and belts — that contain one or more of the Listed
6 Chemicals. All such items shall be referred to herein as the “Products.”

7 **1.6 Notices of Violation**

8 On January 26, 2009, Dr. Held served Rubies Costume and various public enforcement
9 agencies with a document entitled “60-Day Notice of Violation” that provided Rubies Costume and
10 such public enforcers with notice that alleged that Rubies Costume was in violation of California
11 Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products
12 exposed users in California to DEHP. On June 30, 2009, Dr. Held served Rubies Costume and
13 various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of
14 Violation” that provided Rubies Costume and such public enforcers with notice that alleged that
15 Rubies Costume was in violation of California Health & Safety Code §25249.6 for failing to warn
16 consumers and customers that the Products, apparel, gloves and toys with vinyl components exposed
17 users in California to DEHP. On or about October 29, 2010, Dr. Held served Rubies Costume and
18 various public enforcers with a “Second Supplemental 60-Day Notice of Violation” that provided
19 Rubies Costume and such public enforcers with notice that alleged that Rubies Costume was in
20 violation of California Health & Safety Code §25249.6 for failing to warn consumers that the
21 Products exposed users in California to additional toxins, including antimony, arsenic, cadmium,
22 chromium, lead, mercury, selenium and formaldehyde. The 60-Day Notice of Violation,
23 Supplemental 60-Day Notice of Violation, and Second Supplemental 60Day Notice of Violation shall
24 be referred to collectively as the “Notices.”

25 **1.7 Complaint**

26 On July 2, 2009, Dr. Held, who was and is acting in the interest of the general public in
27 California, filed a complaint in the Marin County Superior Court, naming Rubies Costume as a
28 defendant and alleging violations of Health & Safety Code §25249.6 by Rubies Costume based on

1 the alleged exposures to DEHP contained in the children’s costumes with vinyl components
2 manufactured, distributed and/or offered for sale in California by the company (“Complaint”). On
3 October 19, 2009, the Complaint was amended *nunc pro tunc* to include the Products, apparel, gloves
4 and toys with vinyl components when the Court approved the original Consent Judgment. Provided
5 that no public enforcers diligently prosecute the allegations contained in the Second Supplemental
6 60-Day Notice dated October 29, 2010, the Amended Complaint shall be further amended to include
7 the Second Supplemental 60-Day Notice’s allegations pertaining to the additional chemicals.

8 **1.8 No Admission**

9 Rubies Costume denies the material, factual, and legal allegations contained in Dr. Held’s
10 Notices and maintains that all products that they have manufactured, distributed and/or sold in
11 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
12 Modified Consent Judgment shall be construed as an admission by Rubies Costume of any fact,
13 finding, issue of law or violation of law; nor shall compliance with this Modified Consent Judgment
14 constitute or be construed as an admission by Rubies Costume of any fact, finding, conclusion, issue
15 of law or violation of law, such being specifically denied by Rubies Costume. However, this section
16 shall not diminish or otherwise affect the obligations, responsibilities and duties of Rubies Costume
17 under this Modified Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Modified Consent Judgment only, the parties stipulate that this Court has
20 continuing jurisdiction over Rubies Costume as to the allegations contained in the Complaint, that
21 venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the
22 provisions of this Modified Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Modified Consent Judgment, the term “Effective Date” shall mean
25 October 29, 2010.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment**

3 After the Effective Date, Rubies Costume shall only ship Products for sale in California that
4 are “reformulated” as set forth below. For purposes of this settlement agreement, “reformulated”
5 shall mean that every accessible component that can be mouthed, handled or touched shall contain
6 less than or equal to the following content limits, by weight, for the toxins identified in Table 2.1
7 below:

8

Chemical	Limit
Antimony	60 ppm*
Arsenic	25 ppm*
Cadmium	75 ppm*
Chromium	60 ppm*
DEHP	1,000 ppm**
Formaldehyde	<ul style="list-style-type: none">• For clothing and textiles in direct contact with skin: no greater than 100 ppm, or no greater than 100 ppm after wash if there is a label or instruction recommending to “wash before first use”;• For clothing and textiles not in direct contact with skin: no greater than 300 ppm
Lead	<ul style="list-style-type: none">• 90 ppm for all paint and surface coatings (16 CFR § 1303 <i>et seq.</i>)• 100 ppm for any children’s products (as such term is defined by the Consumer Product Safety Improvement Act of 2008)• 300 ppm for any other non-children’s product that does not involve paint or other surface coatings
Mercury	60 ppm*
Selenium	500 ppm*

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24 **Table 2.1**

25 In order to determine whether the Products contain less than the reformulated standard above,
26 Rubies Costume may only utilize testing methodologies and definitions allowed by the State of
27 California Environmental Protection Agency or by the U.S. Consumer Product Safety Commission
28

1 pursuant to the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), including Section
2 106 of the CPSIA for those chemical limits noted with a “*” in Table 2.1 above, and Section 108 for
3 the chemical limits noted with a “**” in Table 2.1 above.

4 **2.2 Further Modification of Reformulation Standards**

5 If the State of California has adopted (or will adopt after the Effective Date) a more protective
6 standard than the content levels now listed in Table 2.1 above – either by statute, regulation, or
7 judgment entered into by the California Attorney General on behalf of the People of the State of
8 California – then such standard shall automatically supersede the levels listed in Table 2.1.

9 In addition, plaintiff may, after giving 30 days’ notice to Rubies Costume, move the Court to
10 further modify the reformulation standards in Table 2.1 if facts exist that demonstrate that the current
11 levels set are insufficient to reduce reasonably anticipated exposures to the Listed Chemicals below
12 that hazard level which would require a warning obligation under the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, California Health & Safety Code §25249.6. If plaintiff seeks to further
14 modify this Consent Judgment to lower the permissible content levels of one or more Listed
15 Chemicals, Rubies Costume shall reimburse Dr. Held and his counsel for a portion of their reasonable
16 attorneys’ fees and costs, up to an amount of \$5,000, to be paid by Rubies Costume within five days
17 of approval of such modification. The foregoing does not in any way limit Rubies Costume’s right to
18 oppose any such modification or the Court’s discretion to deny a motion by Dr. Held to modify the
19 Consent Judgment, but the burden of opposing such modification shall remain with Rubies Costume
20 consistent with Health & Safety Code §25249.10(c).

21 **3. MONETARY PAYMENTS**

22 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

23 In settlement of all claims related to the Products and Listed Chemicals referred to in the
24 Complaint and this Modified Consent Judgment, pursuant to Health & Safety Code § 25249.7(b),
25 Rubies Costume, which has already paid \$4,000 in civil penalties, shall pay an additional \$4,000 in
26 civil fines. Civil penalties are to be apportioned in accordance with California Health & Safety Code
27 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
28 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as

1 provided by California Health & Safety Code §25249.12(d). Rubies Costume shall issue two
2 separate checks for the additional penalty payment: (a) one check made payable to “The Chanler
3 Group in Trust for OEHHA” in the amount of \$3,000, representing 75% of the total penalty; and (b)
4 one check to “The Chanler Group in Trust for Anthony Held” in the amount of \$1,000, representing
5 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA,
6 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
7 information shall be provided five calendar days before the payment is due.

8 Payment shall be delivered to Dr. Held's counsel on or before November 15, 2010, at the
9 following address:

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

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

14 **4.1 Attorney Fees and Costs.**

15 The Parties acknowledge that Dr. Held and his counsel offered to resolve the modification of
16 the Consent Judgment without reaching terms on the amount of fees and costs to be reimbursed to
17 them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been
18 settled. Rubies Costume then expressed a desire to resolve the fee and cost issue shortly after the
19 other modified settlement terms had been finalized. The Parties then attempted to (and did) reach an
20 accord on the compensation due to Dr. Held and his counsel under general contract principles and the
21 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
22 performed through the mutual execution of this modified agreement, including any recouped fees
23 from the underlying action and original settlement. Rubies Costume, which has already reimbursed
24 Dr. Held and his counsel a total of \$28,500 for fees and costs incurred as a result of investigating,
25 bringing this matter to Rubies Costume's attention, and litigating and negotiating a settlement in the
26 public interest, agrees to pay an additional amount of \$24,000. Rubies Costume shall issue a separate
27 1099 for such additional fees and costs (EIN: 97-3171522) and shall make the checks payable to
28 “The Chanler Group” and shall be delivered on or before November 15, 2010.

1 The Chanler Group
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**

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, their subsidiaries, affiliates and each of their downstream distributors, wholesalers,
17 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users,
18 parent companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,
19 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
20 "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims
21 relate to Releasees alleged failure to warn about exposures to or identification of the various Listed
22 Chemicals contained in the Products.

23 **5.2 Rubies Costume Release of Dr. Held**

24 Rubies Costume waives any and all claims against Dr. Held, his attorneys and other
25 representatives, for any and all actions taken or statements made (or those that could have been taken
26 or made) by Dr. 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 and/or with respect to the Products.

1 **6. COURT APPROVAL**

2 This Modified Consent Judgment is not effective until it is approved and entered by the Court
3 and shall be null and void if, for any reason (including, the diligent prosecution of the allegations
4 contained in the Second Supplemental Notice by the California Attorney General or other public
5 enforcer), it is not approved and entered by the Court within one year after it has been fully executed
6 by all parties, in which event any additional monies that have been provided to Dr. Held, or his
7 counsel pursuant to Section 3 and/or Section 4 above, relating to this Modified Consent Judgment,
8 shall be refunded within fifteen (15) days after receiving written notice from Rubies Costume that the
9 one-year period has expired.

10 **7. SEVERABILITY**

11 If, subsequent to the execution of this Modified Consent Judgment, any of the provisions of
12 this Modified Consent Judgment are held by a court to be unenforceable, the validity of the
13 enforceable provisions remaining shall not be adversely affected.

14 **8. GOVERNING LAW**

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

23 **9. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Modified Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by
27 the other party at the following addresses:
28

1 For Rubies Costume:

2 Marc Beige, President
3 Rubie's Costume Company, Inc.
4 1 Ruby Plaza
5 Richmond Hill, NY 11418

6 With Copies to:

7 Frederick Locker
8 Locker Greenberg & Brainin PC
9 Attorneys At Law
10 420 Fifth Avenue
11 New York NY 10018

12 For Dr. Held:

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

24 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

27 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

28 The parties acknowledge that this Modified Consent Judgment shall be approved by the Court
through the parties' stipulation. In furtherance of obtaining such approval, Dr. Held and Rubies
Costume and their respective counsel agree to mutually employ their best efforts to support the entry
of this agreement as a Modified Consent Judgment 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 stipulation and proposed order for judicial approval.

1 **13. MODIFICATION**

2 The Parties anticipate that additional companies similarly situated to Rubies Costume may
3 wish to avail themselves to the terms of this Modified Consent Judgment. Accordingly, the Parties
4 reserve their right to modify this agreement further in order to add additional defendants. This
5 Modified Consent Judgment may be further modified only: (1) by written agreement of the parties
6 and upon entry of a further modified consent judgment by the Court thereon; or (2) upon a successful
7 motion of any party and entry of a further modified consent judgment by the Court.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Modified Consent Judgment on behalf of their
10 respective parties and have read, understood and agree to all of the terms and conditions hereof.
11
12

13 **AGREED TO:**

AGREED TO:

14 Date: 11/9/10 _____

Date: _____

15 *Anthony E Held*
16 By: _____
17 ANTHONY E. HELD, Ph.D., P.E.

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

20 **IT IS SO ORDERED.**

21
22 Date: _____

23 _____
24 JUDGE OF THE SUPERIOR COURT

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3 wish to avail themselves to the terms of this Modified Consent Judgment. Accordingly, the Parties
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10 respective parties and have read, understood and agree to all of the terms and conditions hereof.
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13 **AGREED TO:**

AGREED TO:

14 Date: _____

Date: October 28, 2010

15
16 By: _____
17 ANTHONY E. HELD, Ph.D., P.E.

By: Marc P. Beige
18 Marc Beige, President
19 RUBIES COSTUME COMPANY, INC.

20
21 **IT IS SO ORDERED.**

22
23 Date: _____

24 JUDGE OF THE SUPERIOR COURT
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