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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

Coordinated Proceeding:

JCCP Case No. 4666

This Document Relates to:

**[PROPOSED] MODIFIED
CONSENT JUDGMENT**

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

(Marin County Case No. CIV 093325)

Plaintiff,

v.

Health & Safety Code § 25249.6

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

Defendants.

1 **1. INTRODUCTION**

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

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

7 **1.2 Plaintiff**

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

11 **1.3 Rubies Costume**

12 Settling Defendant employs ten or more persons and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”). Settling Defendant manufactures,
15 distributes, and/or sells “Products” as defined in Section 1.5 below.

16 **1.4 General Allegations**

17 Dr. Held alleges that Settling Defendant has manufactured, distributed and/or sold in the State
18 of California Products containing: di(2 ethylhexyl)phthalate (“DEHP”); di-n-butyl phthalate
19 (“DBP”); arsenic and/or arsenic compounds; cadmium and/or cadmium compounds; lead and/or lead
20 compounds; and/or formaldehyde, each of which are listed pursuant to Proposition 65, as chemicals
21 known to the State of California to cause cancer, birth defects, and/or other reproductive harm.
22 DEHP, DBP, arsenic and/or arsenic compounds, cadmium and/or cadmium compounds, lead and/or
23 lead compounds, and formaldehyde are referred to herein as the “Listed Chemicals.”

24 **1.5 Product Description**

25 The products that are covered by this Modified Consent Judgment are defined as follows: (a)
26 Halloween costumes; (b) Halloween costume accessories, specifically wigs, masks, gloves, footwear,
27 belts, bags, hats, costume props, hosiery, weapons and jewelry intended to accessorize a costume (but
28 excluding makeup); and (c) Halloween indoor and outdoor home décor and games, specifically

1 Halloween candy bowls, lawn, wall, door and table ornaments, decorative spiders/webs, ghosts,
2 witches, goblins, skeletons, bats, cats and tombstones, each of which contains one or more of the
3 Listed Chemicals. All such items shall be collectively referred to herein as the “Products.” The
4 Products and Listed Chemicals applicable to Settling Defendant are limited to those Products sold by
5 Settling Defendant in California and which are selected by Settling Defendant on Exhibit A.

6 Jewelry (as defined in Health & Safety Code §§ 25214.1 *et seq.*) intended to accessorize a
7 costume that would otherwise be a Product covered by this Modified Consent Judgment but which is
8 the subject of a separate third-party 60-Day Notice issued to Settling Defendant pursuant to
9 Proposition 65 on or before August 1, 2011, including, but not limited to, the Center for
10 Environmental Health (“CEH”) notices to Settling Defendant dated November 20, 2008, and
11 December 9, 2010, is specifically excluded from this Modified Consent Judgment and from the
12 defined term Products, except for Settling Defendant’s agreement to reformulate jewelry as set forth
13 in Section 2.1 below.

14 Should any such third-party notices to Settling Defendant covering jewelry ultimately be
15 found to be legally insufficient, or should a court of competent jurisdiction enter judgment against
16 plaintiff in any case brought based on such third-party notices, or otherwise dismiss a case brought
17 upon such third-party notices, all of Settling Defendant’s jewelry intended to accessorize a costume
18 shall thereafter be deemed to be included for all purposes within the defined term Products following
19 expiration of any supplemental 60-day notice covering such jewelry issued by Plaintiff pursuant to
20 the procedures set forth in Section 3.3 below. In such instance, Settling Defendant shall provide Dr.
21 Held with written notice and shall make the additional payment set forth in Section 3.3.

22 **1.6 Procedural Background and Posture**

23 On January 26, 2009, Dr. Held served Rubies Costume and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” alleging that Rubies Costume was in
25 violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers
26 that children’s costumes with vinyl components containing DEHP exposed users in California to
27 DEHP.
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1 On June 30, 2009, Dr. Held served Rubies Costume and various public enforcement agencies
2 with a document entitled “Supplemental 60-Day Notice of Violation” alleging that Rubies Costume
3 was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers and
4 customers that children’s costumes with vinyl components, children’s costumes with inflatable vinyl
5 components, children’s gloves with vinyl components, and vinyl balls exposed users in California to
6 DEHP.

7 On July 2, 2009, Dr. Held, who was and is acting in the interest of the general public in
8 California, filed a complaint in the Marin County Superior Court, naming Rubies Costume as a
9 defendant and alleging violations of Health & Safety Code § 25249.6 based on the allegations
10 contained in the January 26, 2009 Notice related to exposures to DEHP contained in the children’s
11 costumes with vinyl components manufactured, distributed, and/or offered for sale in California by
12 Rubies Costume (“Complaint”).

13 On September 22, 2009, Held and Rubies Costume entered into a [Proposed] Consent
14 Judgment, which settled the allegations contained in the January 26, 2009 and June 30, 2009 Notices.
15 The Court approved the Consent Judgment on December 10, 2009, and, pursuant to the terms of the
16 Consent Judgment, amended the Complaint *nunc pro tunc* to include allegations with respect to the
17 products covered by the Consent Judgment.

18 On October 29, 2010, Dr. Held served Rubies Costume and various public enforcement
19 agencies with a document entitled “Second Supplemental 60-Day Notice of Violation” alleging that
20 Rubies Costume was in violation of California Health & Safety Code § 25249.6 for failing to warn
21 consumers and customers that Halloween costumes and Halloween accessories exposed users in
22 California to DEHP, lead, antimony, arsenic, cadmium, chromium, mercury, selenium, and
23 formaldehyde.

24 On or about September 20, 2011, Dr. Held served Rubies Costume and various public
25 enforcers with an “Amended Second Supplemental 60-Day Notice of Violation” alleging that Rubies
26 Costume was in violation of California Health & Safety Code § 25249.6 for failing to warn
27 consumers that certain Products, as defined in Section 1.5, exposed users in California to the Listed
28 Chemicals.

1 Provided that no public enforcers diligently prosecute the allegations contained in the
2 Amended Second Supplemental 60-Day Notice served on or about September 20, 2011, the
3 Complaint shall be deemed amended to include the allegations contained in the Amended Second
4 Supplemental Notice.

5 **1.7 No Admission**

6 Nothing in this Modified Consent Judgment is or shall be construed as an admission by
7 Settling Defendant of any fact, conclusion of law, issue of law or violation of law, nor shall
8 compliance with the Modified Consent Judgment constitute or be construed as an admission by
9 Settling Defendant of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
10 Modified Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
11 Settling Defendant may have in any other legal proceeding. This Modified Consent Judgment is the
12 product of negotiation and compromise and is accepted by the parties for purposes of settling,
13 compromising and resolving issues disputed in this Action.

14 **1.8 Consent to Jurisdiction**

15 For purposes of this Modified Consent Judgment only, Settling Defendant stipulates that this
16 Court has continuing jurisdiction over it as to the allegations contained in the Complaint, that venue
17 is proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
18 provisions of this Modified Consent Judgment. Also for purposes of this Modified Consent
19 Judgment only, Settling Defendant waives the statute of limitations on Plaintiff's claims in the
20 Notices, the captioned Action, and with respect to any claims incorporated pursuant to any
21 supplemental notices issued under Section 3.3.

22 **1.9 Effective Date**

23 For purposes of this Modified Consent Judgment, the term "Effective Date" shall mean the
24 date 30 days after the date on which this Modified Consent Judgment is entered by the Court as to
25 Settling Defendant.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment**

3 After the Effective Date, Settling Defendant shall only ship Products for sale in California that
4 are “reformulated” as set forth below. For purposes of this Modified Consent Judgment,
5 “reformulated” shall mean that every accessible component that can be mouthed, handled or touched
6 (“Accessible Component”) shall yield less than or equal to the following content limits, by weight,
7 for the chemicals identified in Table 2.1 below:

8 Table 2.1

9

10 Chemical	Limit
11 Arsenic	25 ppm*
12 Cadmium	75 ppm*
13 BBP	1,000 ppm**
14 DBP	1,000 ppm**
15 DEHP	1,000 ppm**
16 Formaldehyde	<ul style="list-style-type: none">17 • For clothing and textiles in direct contact with skin: no greater than 100 ppm, or no greater than 100 ppm after washing if there is a label or instruction recommending to “wash before first use”;18 • For clothing and textiles not in direct contact with skin: no greater than 300 ppm
19 Lead	<ul style="list-style-type: none">20 • 90 ppm for all paint and surface coatings (16 CFR § 1303 <i>et seq.</i>)21 • 100 ppm for any children’s products (as such term is defined by the Consumer Product Safety Improvement Act of 2008)22 • 300 ppm for any other non-children’s product that does not involve paint or other surface coatings

23 In order to determine whether the Products contain less than the reformulated standard above,
24 Settling Defendant may only utilize testing methodologies and definitions allowed by the State of
25 California Environmental Protection Agency or by the U.S. Consumer Product Safety Commission
26 pursuant to the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), including Section
27 106 of the CPSIA for those chemical limits noted with a “*” in Table 2.1 above, and Section 108 for
28 the chemical limits noted with a “**” in Table 2.1 above. For any Products that are or contain

1 jewelry, the jewelry or jewelry component shall also meet the lead limits set forth in Health & Safety
2 Code § 25214.1 *et seq.* for jewelry as defined therein (California’s lead in jewelry law), and the lead
3 limits set forth in the Consent Judgment to which the California Attorney General is a party that was
4 entered by the Court in *People v. Burlington Coat Factory, et al.*, Alameda County Superior Court
5 Case No. RG04162075 (a case that is a part of JCCP 4666) for jewelry as defined therein (and any
6 amendments thereto). Any Products that are or contain jewelry (whether intended for adults or
7 children) shall also meet the children’s cadmium standards set forth in Health & Safety Code §
8 25249.1 *et seq.* pursuant to the test protocols set forth therein. Settling Defendant expressly agrees to
9 be bound by the reformulation requirements of this Modified Consent Judgment for any and all
10 Products identified on Exhibit A hereto as of the Effective Date, including any and all jewelry that is
11 subject to exclusion from the definition of Products due to a third-party 60-day notice as set forth in
12 Section 1.5 of this Modified Consent Judgment.

13 **2.2 Further Modification of Reformulation Standards**

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

18 In addition, Plaintiff may, after giving 30 days’ notice to Rubies Costume, move the Court to
19 further modify the reformulation standards in Section 2.1 if facts exist that demonstrate that the
20 current levels set are insufficient to reduce reasonably anticipated exposures to the Listed Chemicals
21 below that hazard level which would require a warning obligation under the Safe Drinking Water and
22 Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6. If Plaintiff seeks to
23 further modify this Modified Consent Judgment to lower the permissible content levels of one or
24 more Listed Chemicals, Rubies Costume shall reimburse Dr. Held and his counsel for a portion of
25 their reasonable attorneys’ fees and costs, up to an amount of \$5,000, to be paid by Rubies Costume
26 within fourteen days of approval of such modification. The foregoing does not in any way limit
27 Rubies Costume’s or other Rubies Costume’ rights to oppose any such modification or the Court’s
28 discretion to deny a motion by Dr. Held to modify the Modified Consent Judgment, but the burden of

1 opposing such modification shall remain with Rubies Costume and/or any Rubies Costume who
2 oppose the modification consistent with Health & Safety Code § 25249.10(c). Should such a
3 modification be denied, Rubies Costume shall not be required to pay any of Plaintiff's attorneys' fees
4 and costs associated with seeking such modification.

5 **3. RUBIES COSTUME'S MONETARY PAYMENTS**

6 **3.1 Payments by Rubies Costume Pursuant to Health & Safety Code § 25249.7(b).**

7 In settlement of all claims related to the Products and Listed Chemicals referred to in the
8 Complaint and this Modified Consent Judgment, pursuant to Health & Safety Code § 25249.7(b),
9 Rubies Costume, which has already paid \$4,000 in civil penalties, shall pay an additional \$6,000 in
10 civil penalties. Civil penalties are to be apportioned in accordance with California Health & Safety
11 Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
12 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
13 remitted to Dr. Held.

14 **3.2 Rubies Costume's Payment of Attorney Fees and Costs.**

15 Rubies Costume, which has already reimbursed Dr. Held and his counsel a total of \$24,000
16 for fees and costs, agrees to pay an additional amount of \$34,000 in fees and costs incurred as a result
17 of Plaintiff investigating, bringing this matter to Rubies Costume's attention, and litigating and
18 negotiating a settlement in the public interest.

19 **3.3 Settling Defendant, whose jewelry products are initially excluded from the definition**
20 **of Products pursuant to Section 1.5, may later add those jewelry products to the Products covered by**
21 **this Modified Consent Judgment consistent with the disposition of any third-party notices or**
22 **enforcement actions based thereon as set forth in Section 1.5, and Plaintiff agrees to issue a**
23 **supplemental 60-day notice to cover such jewelry products hereunder consistent with Section 1.5.**
24 **Settling Defendant shall cooperate with Plaintiff in providing additional information or**
25 **representations necessary to enable Plaintiff to issue any such supplemental 60-Day Notice(s) and**
26 **Certificate(s) of Merit. Should Settling Defendant avail itself of this procedure consistent with the**
27 **requirements of Section 1.5, Settling Defendant shall make a supplemental payment to Plaintiff of**
28 **\$18,000. Settling Defendant (on behalf of itself and its affiliates) shall only be required to make a**

1 one-time payment of \$18,000 if this procedure is invoked to cover jewelry on behalf of itself and/or
2 its affiliates. Plaintiff shall submit an application to the court for a proper allocation of the \$18,000
3 between civil fines and attorneys' fees.

4 **3.4 Payment Instructions.** All settlement payments required by this Consent Judgment
5 shall be paid as follows:

6 **3.4.1 Civil Penalties:** Civil Penalties paid under this Modified Consent Judgment
7 shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with
8 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Plaintiff.
9 Each Settling Defendant shall issue two separate checks for the penalty payment: (a) one check made
10 payable to "The Chanler Group in Trust For OEHHA" in an amount representing 75% of the total
11 penalty; and (b) one check to "The Chanler Group in Trust For Anthony Held" in an amount
12 representing the remaining 25% of the total penalty. Two separate 1099s shall be issued for the
13 above payments, including those payments already made by Rubies Costume: (a) OEHHA, P.O. Box
14 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held. The information required
15 to issue the 1099s for Plaintiff shall be provided five calendar days before the payment is due.

16 **3.4.2 Attorneys' Fees:** Attorneys' fees shall be paid by means of a check made
17 payable to "The Chanler Group."

18 **3.4.3 Timing of Rubies Costume's Payments:** All funds payable by Rubies
19 Costume under Sections 3.1 and 3.2 shall be transmitted to Plaintiff on or before September 20, 2011.

20 **3.4.4 Payment Delivery:** All settlement payments required by this Consent
21 Judgment shall be sent to the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

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1 **4. RELEASE OF ALL CLAIMS**

2 **4.1 Dr. Held’s Release of Rubies Costume**

3 **4.1.1** This Modified Consent Judgment is a full, final, and binding resolution
4 between Plaintiff, on behalf of himself and in the public interest, and Settling Defendant, its parents,
5 subsidiaries, and affiliated entities that are under common ownership, directors, officers, employees,
6 and attorneys (“Defendant Releasees”), and each entity to whom they directly or indirectly distribute
7 or sell Products, including but not limited to distributors, wholesalers, customers, retailers,
8 franchisees, cooperative members, licensors, and licensees (“Downstream Defendant Releasees”) of
9 any violation of Proposition 65 that was or could have been asserted in the Complaint against Settling
10 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn
11 about alleged exposure to Listed Chemicals contained in the Products that were sold by Settling
12 Defendant prior to the Effective Date. Rubies Costume’s affiliates, subsidiaries, and related entities
13 are excluded from the definition of Defendant Releasees and Downstream Defendant Releasees and
14 shall not be covered or released by any portion of this Consent Judgment unless each such entity
15 elects to participate in this Consent Judgment as a Settling Defendant.

16 **4.1.2** In further consideration of the promises and agreements herein contained, the
17 injunctive relief commitments set forth in Section 2, and for the payments to be made pursuant to
18 Section 3, Plaintiff on behalf of himself, his past and current agents, representatives, attorneys,
19 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
20 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
21 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
22 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited
23 to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever (collectively
24 “claims”), against Settling Defendant, each of its Defendant Releasees, and each of its Downstream
25 Defendant Releasees. This release is limited to those claims that arise under Proposition 65 with
26 respect to Listed Chemicals in the Products manufactured, distributed or sold by the Settling
27 Defendant, as such claims relate to the alleged failure to warn under Health & Safety Code § 25249.6
28 as to the Listed Chemicals in such Products.

1 **4.1.3** Plaintiff also, in his individual capacity only and *not* in his representative
2 capacity, provides a release herein which shall be effective as a full and final accord and satisfaction,
3 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
4 claims, liabilities and demands of Plaintiff of any nature, character or kind, known or unknown,
5 suspected or unsuspected, arising out of alleged or actual exposure to the Listed Chemicals in the
6 Products manufactured, distributed or sold by Settling Defendant, each of its Defendant Releasees,
7 and, to the extent supplied by any of them, each of its Downstream Defendant Releasees, whether or
8 not such Products are or contain jewelry that is excluded from the definition of Products as defined in
9 Section 1.5 above. In exchange for this release, Settling Defendant expressly agrees to be bound by
10 the reformulation requirements of this Modified Consent Judgment for Products that are or contain
11 jewelry as of the Effective Date, whether or not any such jewelry is otherwise subject to exclusion
12 from the definition of Products due to a third-party 60-day notice as set forth in Section 1.5 of this
13 Consent Judgment.

14 **4.1.4** Compliance with the terms of this Modified Consent Judgment by Settling
15 Defendant constitutes compliance with Proposition 65 with respect to Listed Chemicals in Settling
16 Defendant's Products. Only Parties to this Modified Consent Judgment and the Attorney General
17 may enforce its terms, and the terms of this Modified Consent Judgment are intended to govern
18 Settling Defendant's future compliance with Proposition 65 with respect to Listed Chemicals in the
19 Products.

20 **4.1.5** Nothing in this Section 4 affects Plaintiff's right to commence or prosecute an
21 action under Proposition 65 against any person other than Settling Defendant, Defendant Releasees,
22 or Downstream Defendant Releasees.

23 **4.1.6** Nothing in this Section 4 affects Plaintiff's right to commence or prosecute
24 an action under Proposition 65 against a Downstream Defendant Releasee that does not involve
25 Settling Defendant's Products.

26 **4.2 Settling Defendant's Release of Dr. Held**

27 Settling Defendant waives any and all claims against Dr. Held, his attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been taken

1 or made) by Dr. Held and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against Settling Defendant
3 in this matter, and/or with respect to the Products.

4 **5. COURT APPROVAL**

5 **5.1** The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7,
6 a noticed motion is required to obtain judicial approval of this Modified Consent Judgment, and shall
7 file a joint motion for approval. Rubies Costume shall prepare and provide to Held the initial draft
8 joint motion and all required approval documents on or before October 1, 2011. If this Modified
9 Consent Judgment is not approved by the Court within one year, the Parties shall meet and confer to
10 determine whether to modify the terms of the Modified Consent Judgment and to resubmit it for
11 approval. Rubies Costume and its counsel agree to support Held's effort to obtain final entry of this
12 Modified Consent Judgment by the trial court and to undertake any actions reasonably necessary to
13 implement and/or modify this Modified Consent Judgment in order to further the mutual intention of
14 the Parties in entering into this Modified Consent Judgment.

15 **5.2** If this Modified Consent Judgment is not entered by the Court as to Rubies Costume
16 within one year, it shall be of no force or effect as to Rubies Costume and shall never be introduced
17 into evidence or otherwise used in any proceeding for any purpose other than to determine the rights
18 or obligations of a Party as a result of the fact that the Modified Consent Judgment was not approved.
19 In the event this Modified Consent Judgment is not approved, Plaintiff shall refund the monies paid
20 by Rubies Costume within 15 days of the written request of Rubies Costume, provided that Rubies
21 Costume first complies with the obligations set forth in Section 5.1 above.

22 **6. GOVERNING LAW**

23 The terms of this Modified Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed,
25 preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
26 Settling Defendant may provide written notice to Dr. Held of any asserted change in the law, and
27 shall have no further obligations pursuant to this Modified Consent Judgment with respect to, and to
28 the extent that, the Products are so affected. Nothing in this Modified Consent Judgment shall be

1 interpreted to relieve Settling Defendant from any obligation to comply with any pertinent state or
2 federal toxics control laws.

3 **7. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **8. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

10 **9. NOTICES**

11 When any Party is entitled to receive any notice under this Modified Consent Judgment, the
12 notice shall be sent by certified mail or electronic mail to the following:

13 For Rubies Costume:

14 J. Robert Maxwell
15 Rogers Joseph O'Donnell
16 311 California Street, 10th floor
17 San Francisco, CA 94104
18 E-mail: jrm@rjo.com

19 For Dr. Held:

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

25 The Parties may modify the person and address to whom the notice is to be sent by sending
26 the other Party notice by certified mail and/or other verifiable form of written communication.

27 **10. MODIFICATION**

28 Except as set forth in Section 2.2 relating to the reformulation standards, this Modified
Consent Judgment may be modified or amended only: (1) by written agreement of the Parties and
upon entry of a Stipulation and Order by the court thereon; or (2) upon a successful motion or
application of any party which motion or application shall not be unreasonably opposed unless a
material term affecting the opposing party is at issue.

1 **11. ATTORNEYS' FEES**

2 Except as otherwise provided in this Modified Consent Judgment, each Party shall bear its
3 own attorneys' fees and costs.

4 **12. OTHER TERMS**

5 **12.1** The terms of this Modified Consent Judgment shall be governed by the laws of the
6 State of California.

7 **12.2** This Modified Consent Judgment shall apply to and be binding upon Plaintiff and
8 Settling Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors
9 or assigns of any of them.

10 **12.3** This Modified Consent Judgment contains the sole and entire agreement and
11 understanding of the Parties with respect to the entire subject matter set forth in this Modified
12 Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings
13 related thereto, if any, are deemed merged. No representations, oral or otherwise, express or
14 implied, other than those specifically referred to in this Modified Consent Judgment have been
15 made by any Party with respect to the subject matter of this Modified Consent Judgment. No other
16 agreements not specifically contained or referenced in this Modified Consent Judgment, oral or
17 otherwise, shall be deemed to exist or to bind any of the Parties with respect to the subject matter of
18 this Modified Consent Judgment. No supplementation, modification, waiver, or termination of this
19 Modified Consent Judgment shall be binding unless executed in writing by the Party to be bound.
20 No waiver of any of the provisions of this Modified Consent Judgment shall be deemed or shall
21 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
22 constitute a continuing waiver.

23 **12.4** Nothing in this Modified Consent Judgment shall release, or in any way affect any
24 rights that Settling Defendant might have against any other party.

25 **12.5** This Modified Consent Judgment may be executed in counterparts and by means of
26 facsimile or portable document format (.pdf), which taken together shall be deemed to constitute
27 one document.
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1 **12.6** The Parties, including their counsel, have participated in the preparation of this
2 Modified Consent Judgment and this Modified Consent Judgment is the result of the joint efforts of
3 the Parties. This Modified Consent Judgment was subject to revision and modification by the
4 Parties and has been accepted and approved as to its final form by all Parties and their counsel.
5 Accordingly, any uncertainty or ambiguity existing in this Modified Consent Judgment shall not be
6 interpreted against any Party as a result of the manner of the preparation of this Modified Consent
7 Judgment. Each Party to this Modified Consent Judgment agrees that any statute or rule of
8 construction providing that ambiguities are to be resolved against the drafting Party should not be
9 employed in the interpretation of this Modified Consent Judgment and, in this regard, the Parties
10 hereby waive California Civil Code Section 1654.

11 **13. AUTHORITY TO EXECUTE**

12 Each signatory to this Modified Consent Judgment certifies that he or she is fully authorized
13 by the Party he or she represents to stipulate to this Modified Consent Judgment and to enter into
14 and execute the Modified Consent Judgment on behalf of the Party represented and to legally bind
15 that Party.

16
17 **AGREED TO:**

AGREED TO:

18 Date: _____

Date: SEPT 16, 2011

19
20 By: _____
21 ANTHONY E. HELD, Ph.D., P.E.

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

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24 **IT IS SO ORDERED.**

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26 Date: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

The Products applicable to Rubies Costume Company, Inc. are:

(a) Halloween Costumes containing di(2-ethylhexyl)phthalate, di-n-butyl phthalate, lead and/or lead compounds, cadmium and/or cadmium compounds, arsenic and/or arsenic compounds, and/or formaldehyde;

(b) Halloween Costume Accessories, specifically , wigs, masks, gloves, footwear, belts, bags, hats, costume props, hosiery, weapons, and jewelry intended to accessorize a costume (but excluding makeup)¹ containing di(2-ethylhexyl)phthalate, di-n-butyl phthalate, lead and/or lead compounds, cadmium and/or cadmium compounds, arsenic and/or arsenic compounds, and/or formaldehyde; and

(c) Halloween indoor and outdoor Home Décor and Games, specifically Halloween candy bowls, lawn, wall, door and table ornaments, decorative spiders/webs, ghosts, witches, goblins, skeletons, bats, cats and tombstones containing di(2-ethylhexyl)phthalate, di-n-butyl phthalate, lead and/or lead compounds, cadmium and/or cadmium compounds, arsenic and/or arsenic compounds, and/or formaldehyde.

¹ Jewelry products that are the subject of other third-party notices issued on or before August 1, 2011, such as the Center for Environmental Health notices to Rubies Costume Company, Inc. dated November 20, 2008 and December 9, 2010, are specifically excluded pursuant to Section 1.5 of the Modified Consent Judgment unless subsequently included pursuant to Section 3.3 of the Modified Consent Judgment.