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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 TRI-COASTAL DESIGN GROUP INC.; *et al.*,

16 Defendants.

Case No. CGC-08-481439

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Tri-Coastal Design Group Inc.**

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

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: children’s
22 vinyl bags containing the Listed Chemical, including, but not limited to, *Disney/Pixar Cars 11 Piece*
23 *Study Kit (#7 67014 05764 1)*. All such items shall be referred to herein as the “Products.”

24 **1.6 Notice of Violation**

25 On January 26, 2009, Dr. Held served Tri-Coastal and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” that provided Tri-Coastal and such public
27 enforcers with notice that alleged that Tri-Coastal was in violation of California Health & Safety
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1 Code §25249.6 for failing to warn consumers and customers that the Products exposed users in
2 California to DEHP.

3 **1.7 Complaint**

4 On August 5, 2009, Dr. Held, who was and is acting in the interest of the general public in
5 California, filed a second amended complaint in case number CGC-08-481439 of the San Francisco
6 Superior Court, adding Tri-Coastal as a defendant and alleging violations of Health & Safety Code
7 §25249.6 by Tri-Coastal based on the alleged exposures to DEHP contained in the Products
8 manufactured, distributed and/or offered for sale in California by Tri-Coastal (“Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has
20 jurisdiction over Tri-Coastal as to the allegations contained in the Complaint, that venue is proper in
21 the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
22 provisions of this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean September 30,
25 2009.

1 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, Tri-Coastal shall not sell, ship, or offer to be shipped for
4 sale in California any Product unless such Products are sold or shipped with one of the clear and
5 reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section
6 2.2, or comply with the reformulation standards set forth in Section 2.3.

7 Each warning shall be prominently placed with such conspicuousness as compared with other
8 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
9 individual under customary conditions before purchase or use. Each warning shall be provided in a
10 manner such that the consumer or user understands to which *specific* Product the warning applies, so
11 as to minimize the risk of consumer confusion.

12 **(a) Retail Store Sales.**

13 **(i) Product Labeling.** Tri-Coastal may affix a warning to the packaging,
14 labeling, or directly on each Product sold in retail outlets in California by Tri-Coastal or its agents,
15 that states:

16 **WARNING:** This product contains DEHP, a phthalate
17 chemical known to the State of California to
 cause birth defects and other reproductive harm.

18 **(ii) Point-of-Sale Warnings.** Alternatively, Tri-Coastal may provide
19 warning signs in the form below to its customers in California with instructions to post the
20 warnings in close proximity to the point of display of the Products.

21 **WARNING:** This product contains DEHP, a phthalate
22 chemical known to the State of California to
 cause birth defects and other reproductive harm.

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement
3 must be used:¹

4 **WARNING:** The following products contain DEHP, a
5 phthalate chemical known to the State of
6 California to cause birth defects and other
7 reproductive harm:

8 *[list products for which warning is required]*

9 **(b) Mail Order Catalog and Internet Sales.** In the event that Tri-Coastal sells
10 Products via mail order catalog or internet to customers located in California after the Effective Date
11 that are not Reformulated Products, Tri-Coastal shall provide a warning for Products sold via mail
12 order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the
13 website. Warnings given in the mail order catalog or on the website shall identify the specific
14 Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
16 catalog must be in the same type size or larger than the Product description text within the catalog.
17 The following warning shall be provided on the same page and in the same location as the display
18 and/or description of the Product:

19 **WARNING:** This product contains DEHP, a phthalate
20 chemical known to the State of California to
21 cause birth defects and other reproductive harm.

22 Where it is impracticable to provide the warning on the same page and in the same location as
23 the display and/or description of the Product, Tri-Coastal may utilize a designated symbol to cross
24 reference the applicable warning and shall define the term “designated symbol” with the following
25 language on the inside of the front cover of the catalog or on the same page as any order form for the
26 Product(s):

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¹For purposes of the consent judgment, “sold in proximity” shall mean that the Product and another product are offered
for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably
determine which of the two products is subject to the warning sign.

1 **WARNING:** Certain products identified with this symbol
2 ▼ and offered for sale in this catalog contain
3 DEHP, a phthalate chemical known to the
 State of California to cause birth defects and
 other reproductive harm.

4 The designated symbol must appear on the same page and in close proximity to the display
5 and/or description of the Product. On each page where the designated symbol appears, Tri-Coastal
6 must provide a header or footer directing the consumer to the warning language and definition of the
7 designated symbol.

8 If Tri-Coastal elects to provide warnings in the mail order catalog, then the warnings must be
9 included in all catalogs offering to sell one or more Products printed after the Effective Date.

10 (ii) **Internet Website Warning.** A warning may be given in conjunction
11 with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on
12 which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the
13 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
14 during the checkout process. The following warning statement shall be used and shall appear in any
15 of the above instances adjacent to or immediately following the display, description, or price of the
16 Product for which it is given in the same type size or larger than the Product description text:

17 **WARNING:** This product contains DEHP, a phthalate
18 chemical known to the State of California to
 cause birth defects and other reproductive harm.

19 Alternatively, the designated symbol may appear adjacent to or immediately following the
20 display, description, or price of the Product for which a warning is being given, provided that the
21 following warning statement also appears elsewhere on the same web page, as follows:

22 **WARNING:** Products identified on this page with the
23 following symbol ▼ contain DEHP, a
24 phthalate chemical known to the State of
 California to cause birth defects and other
 reproductive harm

25 **2.2 Exceptions To Warning Requirements**

26 The warning requirements set forth in Section 2.1 shall not apply to:

- 27 (i) Any Product manufactured by Tri-Coastal prior to the Effective Date; or

1 (ii) Reformulated Products (as defined in Section 2.3 below).

2 **2.3 Reformulation Standards**

3 Reformulated Products are defined as those Products containing less than or equal to 1,000
4 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to Section 2.1
5 above shall not be required for Reformulated Products.

6 **2.4 Past and Future Reformulation Steps**

7 Tri-Coastal hereby commits that one hundred percent (100%) of the Products that it
8 manufactures after the Effective Date shall qualify as Reformulated Products.

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10 **3. MONETARY PAYMENTS**

11 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

12 In settlement of all claims related to the Products and Listed Chemical referred to in the
13 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Tri-Coastal
14 shall pay \$3,000 in civil penalties.

15 Civil penalties are to be apportioned in accordance with California Health & Safety Code
16 § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental
17 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony
18 Held as provided by California Health & Safety Code §25249.12(d). Tri-Coastal shall issue two
19 separate checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in
20 Trust for OEHHA” in the amount of \$2,250, representing 75% of the total penalty; and (b) one check
21 to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$750, representing 25% of the
22 total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box
23 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be
24 provided five calendar days before the payment is due.

25 Payment shall be delivered to Dr. Held’s counsel on or before September 30, 2009, at the
26 following address:

1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

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

7 **4.1 Attorney Fees and Costs**

8 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
10 issue to be resolved after the material terms of the agreement had been settled. Tri-Coastal then
11 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
12 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
13 Held and his counsel under general contract principles and the private attorney general doctrine
14 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the
15 mutual execution of this agreement. Tri-Coastal, on behalf of itself and those in its chain of
16 distribution, shall reimburse Dr. Held and his counsel a total of \$18,000 for fees and costs incurred as
17 a result of investigating, bringing this matter to Tri-Coastal's attention, and litigating and negotiating
18 a settlement in the public interest. Tri-Coastal shall issue a separate 1099 for fees and costs (EIN:
19 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or
20 before September 30, 2009.

21 Hirst & Chanler LLP
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

26 **5. RELEASE OF ALL CLAIMS**

27 **5.1 Dr. Held's Release of Tri-Coastal**

28 In further consideration of the promises and agreements herein contained, and for the
payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of

1 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
2 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
3 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
4 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
5 Tri-Coastal and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
6 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
7 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
8 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
9 release is limited to those claims that arise under Proposition 65, as such claims relate to Tri-
10 Coastal's alleged failure to warn about exposures to or identification of DEHP contained in the
11 Products.

12 The Parties further understand and agree that the above releases shall not extend upstream to
13 any entities that manufactured the Products or any component parts thereof, or any distributors or
14 suppliers who sold the Products or any component parts thereof to Tri-Coastal.

15 **5.2 Tri-Coastal Release of Dr. Held**

16 Tri-Coastal waives any and all claims against Dr. Held, his attorneys and other
17 representatives, for any and all actions taken or statements made (or those that could have been taken
18 or made) by Dr. Held and his attorneys and other representatives, whether in the course of
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
20 and/or with respect to the Products.

21 **6. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and shall
23 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
24 has been fully executed by all parties, in which event any monies that have been provided to Dr.
25 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
26 (15) days after receiving written notice from Tri-Coastal that the one-year period has expired.
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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Tri-Coastal
9 provide written notice to Dr. Held of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Tri-Coastal from any
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **9. NOTICES**

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

18 For Tri-Coastal:

19 Tedd S. Levine
20 The Law Offices of Tedd S. Levine, LLC
21 1010 Franklin Avenue, 2nd Floor
22 Garden City, NY 11530

23 For Dr. Held:

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

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

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

16 **13. MODIFICATION**

17 This Consent Judgment may be modified only: (1) by written agreement of the parties and
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
19 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
20 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
21 advance of its consideration 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: **APPROVED** AGREED TO:
By Tony Held at 10:17 am, Oct 01, 2009 Date: 9/30/09

By Anthony E. Held
ANTHONY T. HELD, Ph.D., P.E.

By Todd Solomon CFO
Todd Solomon, Chief Financial Officer
TRI-COASTAL DESIGN GROUP INC.

IT IS SO ORDERED.

Date _____
JUDGE OF THE SUPERIOR COURT