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

13 ANTHONY E. HELD, Ph.D., P.E.,
14 Plaintiff,
15 v.
16 GANZ, INC.; and DOES 1 through 150,
17 inclusive,
18 Defendants.

Case No. CGC-09-488689

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Ganz, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E
4 (hereinafter “Dr. Held”) and Ganz U.S.A., LLC incorrectly sued as Ganz, Inc. (hereinafter “Ganz”),
5 with Dr. Held and Ganz 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 Defendants**

11 Ganz 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 §25249.5, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Ganz has manufactured, distributed and/or sold in the State of California
16 children’s toys with vinyl components 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 toys with vinyl components containing the Listed Chemical including, but not limited to, *Rodeo*
24 *Gang Cow, H10410 (#6 61371 07665 2)*. All such items shall be referred to herein as the “Products.”

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1.6 Notice of Violation

On or about March 13, 2009, Dr. Held served Ganz and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Ganz and such public enforcers with notice that alleged that Ganz was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.7 Complaint

On May 26, 2009, Dr. Held, who was and is acting in the interest of the general public in California, in the Superior Court in and for the City and County of San Francisco, filed a complaint against Ganz as a defendant and alleging violations of Health & Safety Code §25249.6 by Ganz based on the alleged exposures to the Listed Chemical contained in the Products manufactured, distributed and/or offered for sale in California by Ganz ("Complaint").

1.8 No Admission

Ganz denies the material factual and legal allegations contained in Dr. Held's Notice Complaint, and maintains that all products that it has sold and distributed 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 Ganz 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 Ganz of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Ganz. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Ganz under this Consent Judgment.

1.9 Consent to Jurisdiction

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

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean June 5, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Ganz shall only manufacture or cause to be manufactured, Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or any other method allowed by a federal or state agency to assess the content of DEHP in a consumer product.

Ganz hereby commits that 50% of the Products that it ships for sale in California after the Effective Date shall be Phthalate Free. Ganz further commits that 100% of the Products that it offers for sale in California after August 1, 2009 shall be Phthalate Free.

Moreover, as of the Effective Date, Ganz shall only manufacture or cause to be manufactured, Children's Toys and Child Care Articles for sale in California that are Lead Free as set forth below. For the purposes of this Consent Judgment the term "Children's Toys" shall mean a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays. The term "Child Care Articles" shall mean a consumer product designed or intended by the manufacturer to facilitate sleep or the feeding of children age three (3) or younger, or to help such children with sucking and teething. The term "Lead Free" shall mean Children's Toys or Child Care Articles containing less than or equal to 300 ppm of lead when analyzed pursuant to EPA methods 3051 and 3050B or any other method allowed by a federal or state agency to assess the content of lead in a consumer product.

1 **2.2 Product Warnings**

2 After the Effective Date, Ganz shall not sell, ship, or offer to be shipped for sale in California,
3 Products containing the Listed Chemical unless such Products are shipped with the clear and
4 reasonable warnings set out in Sections 2.3 and 2.4 or comply with the reformulation requirements of
5 Phthalate Free Products set out in Section 2.1 above.

6 Any warning issued for Products pursuant to Sections 2.3 and 2.4, below, shall be
7 prominently placed with such conspicuousness as compared with other words, statements, designs or
8 devices as to render it likely to be read and understood by an ordinary individual under customary
9 conditions before purchase or, for Products shipped directly to an individual in California, before use.

10 **2.3 Warnings For Retail Store Sales**

11 **(a) Product Labeling.** Ganz may perform its warning obligation by
12 affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold
13 in retail outlets in California by Ganz or its agents, that states:

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

17 **(b) Point-of-Sale Warnings.** Ganz may perform its warning obligations
18 by ensuring that signs are posted at retail outlets in the State of California where the Products are
19 sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to
20 the point of display of the Products that state:

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

24 Where more than one Product is sold in proximity to other like items or to those that do not
25 require a warning (*e.g.*, Phthalate Free as defined in Section 2.1), the following statement must be
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1 used:¹

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

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

7 **2.4 Warnings For Mail Order Catalog and Internet Sales**

8 Ganz shall satisfy its warning obligations for Products sold via mail order catalog or the
9 Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the
10 website. Warnings given in the mail order catalog or on the website shall identify the specific
11 Product to which the warning applies as further specified in subsections (a) and (b) below.

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

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

19 Where it is impracticable to provide the warning on the same page and in the same location as
20 the display of the Product, Ganz may utilize a designated symbol (▲) to cross reference the
21 applicable warning and shall define the term “designated symbol” with the following language on the
22 inside of the front cover of the catalog and on the same page as any order form for the Product(s):

23 **WARNING:** Certain products identified with this symbol ▲
24 and offered for sale in this catalog contain
25 DEHP, a phthalate chemical known to the State
26 of California to cause birth defects and other
27 reproductive harm.

28 The designated symbol must appear on the same page and in close proximity to the display or
description of the Product on such page. On each page where the designated symbol appears, Ganz

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

1 must provide a reference directing the consumer to the warning language and definition of the
2 designated symbol. If Ganz elects to sell one or more Products to consumers via mail order catalog
3 after the Effective Date, then the warnings must be included in all catalogs containing the Products
4 which are distributed in California as of the Effective Date.

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

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

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

19 **WARNING:** Products identified on this page with the
20 following symbol ▲ contain DEHP, a phthalate
21 chemical known to the State of California to
22 cause birth defects and other reproductive harm.

23 **2.5 Exceptions To Warning Requirements**

24 The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- 25 (i) Any Products received by Ganz prior to receipt of the Notice, provided
26 that Ganz does not have actual knowledge, or reason from communications
27 with its suppliers of the Products to believe, that the Listed Chemical is present
28 in such Products in concentrations exceeding 1,000 ppm each; or

1 (ii) Phthalate Free Products (as defined in Section 2.1).
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4 **3. MONETARY PAYMENTS**

5 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

6 In settlement of all the claims referred to in this Consent Judgment, Ganz shall pay **\$2,000.00**
7 in settlement payments to be apportioned in accordance with California Health & Safety Code
8 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
9 Hazard Assessment and the remaining 25% of these settlement monies remitted to Dr. Held as
10 provided by California Health & Safety Code §25249.12(d). Ganz shall issue two separate checks for
11 the settlement payments: (a) one check made payable to Hirst & Chanler LLP in Trust for the State
12 of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust
13 for OEHHA") in the amount of **\$1,500.00**, representing 75% of the total penalty and (b) one check to
14 "Hirst & Chanler LLP in Trust for A. Held" in the amount of **\$500.00**, representing 25% of the total
15 settlement payments. Two separate 1099s shall be issued for the above payments: The first 1099
16 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the
17 amount of **\$1,500.00**. The second 1099 shall be issued to Dr. Held in the amount of **\$500.00**, whose
18 address and tax identification number shall be furnished, upon request, at least five calendar days
19 before payment is due. The payments shall be delivered on or before ten calendar days after the
20 Effective Date, at the following address:

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

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

27 **4.1 Attorney Fees and Costs.**

28 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
private attorney general doctrine and principles of contract law. Under these legal principles, Ganz

1 shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating, bringing
2 this matter to Ganz's attention, and negotiating a settlement in the public interest. Ganz shall pay Dr.
3 Held and his counsel **\$20,000.00** for all attorneys' fees, expert and investigation fees, and related
4 costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP"
5 and shall be delivered on or before ten calendar days after the Effective Date, at the following
6 address:

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

10 Ganz shall issue a separate 1099 for fees and cost paid in the amount of **\$20,000.00** to Hirst &
11 Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

12 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

13 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Ganz will reimburse Dr. Held and
14 his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement
15 in the trial court, in an amount not to exceed **\$6,500.00**. Such additional fees and costs, exclusive of
16 fees and costs that may be incurred in the event of an appeal include, but are not limited to, drafting
17 and filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health
18 & Safety Code §25249.7(f), responding to any third party objections, corresponding with opposing
19 counsel, and appearing before the Court related to the approval process.

20 Reimbursement of such additional fees and costs shall be due within fifteen days after receipt
21 of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee Claim
22 shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the following
23 address:

24 HIRST & CHANLER LLP
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

1 Ganz has the right to object to such reimbursement and may submit the resolution of this issue
2 to the American Arbitration Association (AAA) in Northern California to determine the
3 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of
4 objection or decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days
5 provided for payment following receipt of the Additional Fee Claim. If an arbitration notice is not
6 filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP
7 §1021.5 and this settlement to recover additional attorney fees and costs incurred as set forth in this
8 paragraph. In the event Ganz submits the matter to arbitration, Dr. Held may seek, pursuant to CCP
9 §1021.5, reasonable attorney fees and costs incurred for the arbitration.

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Dr. Held's Release of Ganz**

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

1 In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents,
2 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
4 and releases all Claims against Ganz and each of its Releasees. This additional release, which Dr.
5 Held is providing in his individual capacity, is limited to those Claims that arise with respect to
6 Proposition 65, as such Claims relate to an alleged failure to warn about exposures to or identification
7 of any chemicals listed under Proposition 65 contained in any products sold by Ganz, its parents,
8 subsidiaries, affiliated entities, predecessors, successors and/or assigns.

9 **5.2 Ganz's Release of Dr. Held**

10 Ganz waives any and all claims against Dr. Held, his attorneys and other representatives, for
11 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
12 Held and his attorneys and other representatives, whether in the course of investigating claims or
13 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
14 Products.

15 **5.3 Civil Code §1542 Waiver**

16 All parties acknowledge and agree that they are aware of and understands the provisions of
17 Code of Civil Procedure Section 1542 and hereby knowingly and voluntarily waive the benefits of
18 that section which provides, "A general release does not extend to claims which the creditor does not
19 know or suspect to exist in his or her favor at the time of executing the release, which if known by
20 him or her must have materially affected his or her settlement with the debtor."

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 Ganz 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 Ganz shall
9 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
10 the Products are so affected.

11 **9. NOTICES**

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

16 For Ganz:

17 Annette K. Hansen
18 General Counsel
19 Ganz U.S.A., LLC
 60 Industrial Parkway, #043
 Cheektowaga, NY 14227-9903

20 For Dr. Held:

21 Proposition 65 Coordinator
22 Hirst & Chanler, LLP
23 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

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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 Ganz agree to mutually employ their best efforts to support the entry of this
12 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
13 timely manner.

14 **13. MODIFICATION**

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

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1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 parties and have read, understood, and agree to all of the terms and conditions hereof.
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AGREED TO:	AGREED TO:
Date: APPROVED By Anthony E Held at 3:49 pm, 6/8/09 By: <i>Anthony E Held</i> Anthony D. Held	Date: <u>June 8, 2009</u> By: <i>[Signature]</i> Ganz U.S.A., LLC

11 **IT IS SO ORDERED.**

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13 Date: _____
14 JUDGE OF THE SUPERIOR COURT
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