

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

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

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

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

15 Plaintiff,

16 v.

17 STUDIO RAY, LLC, *et al.*,

18 Defendant.

Case No. CGC-08-481439

**STIPULATION AND [PROPOSED] ORDER
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Studio Ray, LLC**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Held”), and Studio Ray, LLC (“Studio Ray”), with Held and Studio Ray together
5 referred to as the “Parties.”

6 **1.2 Plaintiff**

7 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 Studio Ray employs ten or more persons and are persons in the course of doing business
12 for purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Studio Ray has manufactured, distributed, and/or sold in the State of
15 California children’s jackets with vinyl zipper pulls containing di(2-ethylhexyl)phthalate
16 (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
17 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical
18 known to the State of California to cause birth defects and other reproductive harm. DEHP is
19 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 children’s jackets
22 with vinyl zipper pulls containing di(2-ethylhexyl)phthalate including, but not limited to, *Zero*
23 *Xposur Authentic Element Protector Jacket, Style 104405*. All such products containing DEHP
24 are referred to hereinafter as the “Products”.

25 **1.6 Notice of Violation**

26 On May 22, 2009, Held served Studio Ray, LLC, Fleet Street Ltd., Zero Xposur and
27 various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that
28

1 provided Studio Ray with notice of alleged violations of Health & Safety Code §25249.6 for its
2 failure to warn consumers that the Products that Studio Ray sold exposed users in California to
3 the Listed Chemical.

4 **1.7 Complaint**

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

11 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean October 15,
27 2009.

28

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

2 **2.1 Product Warnings**

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

7 Each warning shall be prominently placed with such conspicuousness as compared
8 with other words, statements, designs, or devices as to render it likely to be read and
9 understood by an ordinary individual under customary conditions before purchase or use.
10 Each warning shall be provided in a manner such that the consumer or user understands to
11 which *specific* Product the warning applies, so as to minimize if not eliminate the chance that
12 an overwarning situation will arise.

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

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

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

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

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

26 Where more than one Product is sold in proximity to other like items or to those that
27 do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the
28

1 following statement must be used:¹

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

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

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

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

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

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

27 _____
28 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
2 symbol ▼ and offered for sale in this
3 catalog contain DEHP, a phthalate
4 chemical known to the State of
5 California to cause birth defects and
6 other reproductive harm.

7 The designated symbol must appear on the same page and in close proximity to the
8 display and/or description of the Product. On each page where the designated symbol
9 appears, Studio Ray must provide a header or footer directing the consumer to the warning
10 language and definition of the designated symbol.

11 If Studio Ray elects to provide warnings in the mail order catalog, then the warnings
12 must be included in all catalogs offering to sell one or more Products printed after the
13 Effective Date.

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

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

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

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

4 **2.2 Exceptions To Warning Requirements**

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

- 6 (i) Any Product manufactured by Studio Ray prior to the Effective Date; or
- 7 (ii) Reformulated Products (as defined in Section 2.3 below).

8 **2.3 Reformulation Standards**

9 Reformulated Products are defined as those Products containing less than or equal to
10 1,000 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to
11 Section 2.1 above shall not be required for Reformulated Products.

12 **2.4 Reformulation Commitment**

13 Studio Ray hereby commits that one hundred percent (100%) of the Products that it
14 manufactures after the Effective Date for sale in California shall qualify as Reformulated
15 Products.

16 **3. MONETARY PAYMENTS**

17 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment against it, Studio Ray
19 shall pay \$7,000 in civil penalties to be apportioned in accordance with California Health &
20 Safety Code §25192, with 75% of these funds remitted to the State of California’s Office of
21 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held
22 as provided by California Health & Safety Code §25249.12(d). Studio Ray shall issue two
23 separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in
24 Trust for the State of California’s Office of Environmental Health Hazard Assessment (OEHHA)
25 in the amount of \$5,250, representing 75% of the total penalty, and (b) one check to Hirst &
26 Chanler LLP in Trust for Held in the amount of \$1,750, representing 25% of the total penalty.
27 Two separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010,

28

1 Sacramento, CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification
2 number shall be furnished, upon request, five calendar days before payment is due. The
3 payments shall be delivered on or before the Effective Date to the following address:

4 Hirst & Chanler LLP
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

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

10 **4.1 Attorney Fees and Costs**

11 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. After the other
14 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
15 compensation due to Held and his counsel under general contract principles and the private
16 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
17 work performed through the mutual execution of this agreement. Studio Ray shall reimburse
18 Held and his counsel for fees and costs incurred as a result of investigating, bringing this matter
19 to Studio Ray's attention, and litigating and negotiating a settlement in the public interest. Studio
20 Ray shall pay Held and his counsel \$21,500 for fees and costs incurred as a result of
21 investigating, bringing this matter to Studio Ray's attention, and litigating and negotiating a
22 settlement in the public interest. Studio Ray shall issue a separate 1099 for fees and costs (EIN:
23 20-3929984) and shall make the check payable to "Hirst & Chanler LLP". Payment shall be
24 delivered on or before the Effective Date to the following address:

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

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of Studio Ray and Downstream Customers**

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

21 **5.2 Studio Ray's Release of Held**

22 Studio Ray waives any and all claims against Held, his attorneys and other
23 representatives, for any and all actions taken or statements made (or those that could have been
24 taken or made) by Held and his attorneys and other representatives, whether in the course of
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
26 and/or with respect to the Products.

1 **6. COURT APPROVAL**

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

8 **7. SEVERABILITY**

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

12 **8. GOVERNING LAW**

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

21 **9. NOTICES**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

To Studio Ray:

Eugene I. Schoenblum
Law Offices of Eugene I Schoenblum
20281 East Country Club Drive, #2309
Aventura, FL 33180

To Held:

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

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.

10. COUNTERPARTS, FACSIMILE SIGNATURES

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

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. MODIFICATION

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

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 of this Consent Judgment.

AGREED TO: **APPROVED**
By Tony Held at 1:09 pm, Oct 13, 2009

AGREED TO:
Date: 10/8/09

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

By: [Signature]
Ray Haber, President
Defendant, STUDIO RAY, LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

HIRST & CHANLER LLP
Date: 10/13/09

LAW OFFICES OF EUGENE SCHOENBLUM
Date: 10/12/09

By: [Signature]
David Lavine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: [Signature]
Eugene I. Schoenblum
Attorneys for Defendant
STUDIO RAY, LLC