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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, Ph.D., P.E.,
13 Plaintiff,
14 v.
15 PETER THOMAS ROTH LABS LLC; and
16 DOES 1-150, inclusive,
17 Defendants.

Case No. RG11585398

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

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1. INTRODUCTION

1.1 Anthony E. Held and Peter Thomas Roth Labs LLC

This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and Peter Thomas Roth Labs LLC (“Peter Thomas Roth” or “Defendant”), with Dr. Held and Defendant collectively referred to as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

Dr. Held alleges that Defendant employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Dr. Held alleges that Defendant has manufactured, distributed, and/or offered for sale in California toiletry cases/bags containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as chemical known to the State of California to cause birth defects and other reproductive harm (hereinafter the “Listed Chemical”).

1.5 Product Description

The products that are covered by this Consent Judgment are toiletry cases/bags allegedly containing the Listed Chemical and sold by Defendant in California including, but not limited to, the *Peter Thomas Roth Acne Treatment Kit (#6 70367 08605 6)*. Defendant’s toiletry cases/bags containing DEHP are referred to hereinafter as the “Products.”

1.6 Notices of Violation

On or about March 31, 2011, Dr. Held served Defendant and various public enforcement agencies with a document entitled 60-Day Notice of Violation (“Notice”) that provided Defendant and such public enforcers with notice that alleged that Defendant was in violation of Proposition 65 for failing to warn consumers and customers that its toiletry cases/bags exposed users in California

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to DEHP.

1.7 Complaint

On July 14, 2011, Dr. Held filed a complaint in the Alameda County Superior Court (the “Complaint”), naming Peter Thomas Roth as a defendant and alleging violations of Proposition 65 based on the allegations in the Notice.

1.8 No Admission

Defendant denies the factual and legal allegations contained in the Notice and Complaint, and maintains that all products that it has sold in California have been and are in compliance with all laws, including, without limitation, Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this Section shall not diminish or otherwise affect Defendant’s obligations, responsibilities and duties 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 Defendant as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to California Code of Civil Procedure §664.6, as a full and binding resolution of all claims which were or could have been raised in the Complaint against Defendant based on the facts alleged therein and in the Notice.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean February 1, 2012.

2. INJUNCTIVE RELIEF

2.1 Sale of Future Products

Defendant represents that it stopped shipping the Products to retailers for sale in California before the Effective Date. In the event that Defendant begins to resell the Products at any time after

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2 the Effective Date, such Products shall contain less than 1,000 parts per million each, by weight, of
3 DEHP, when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A
4 and 8270C.

5 **3. MONETARY PAYMENTS**

6 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

7 Defendant shall be assessed a civil penalty totaling \$10,000 in combined penalty payments
8 and credits. Due to Defendant's cooperation in the resolution of this action and its commitment to
9 only offer Products that meet the description set forth in Section 2.1, above, Dr. Held agrees to apply
10 an automatic credit of \$7,540 to the total civil penalty. Therefore, Defendant shall make a payment
11 of the remaining \$2,460, to be apportioned in accordance with Health & Safety Code section
12 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of
13 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
14 25% of these penalty monies earmarked for Plaintiff.

15 **3.2 Reimbursement of Plaintiff's Fees and Costs**

16 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
18 issue to be resolved after the material terms of the agreement had been settled. Defendant then
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
20 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
21 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter.
23 Under these legal principles, Defendant shall pay the amount of \$25,000 for fees and costs incurred
24 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be
25 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the
26 public interest.

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3.3 Payment Procedures

3.3.1 Funds Held In Trust: All payments required by Sections 3.1 and 3.2 shall delivered on or before February 17, 2012, to The Chanler Group, and shall be held in trust pending the Court’s approval of this Consent Judgment.

Payments delivered to The Chanler Group shall be made payable, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$1,845;
- (b) One check made payable to “The Chanler Group in Trust for Plaintiff” in the amount of \$615; and
- (c) One check made payable to “The Chanler Group in Trust” in the amount of \$25,000.

3.3.2 Issuance of 1099 Forms. After the Consent Judgment has been approved and the settlement funds have been transmitted to plaintiff’s counsel, Defendant shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,845;
- (b) The second 1099 shall be issued to Plaintiff in the amount of \$615, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$25,000.

3.3.3 Payment Address: All payments to The Chanler Group shall be delivered to the following payment address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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CLAIMS COVERED AND RELEASED

4.1 Plaintiff's Public Release of Proposition 65 Claims.

Plaintiff acting on his own behalf and in the public interest releases Defendant from all claims for violations of Proposition 65 up through the Effective Date based on exposure to the Listed Chemical from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical from the Products as set forth in the Notice.

4.2 Plaintiff's Individual Release of Claims.

Plaintiff also, in his individual capacity only and not in his representative capacity, provides a release herein that shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected against Defendant, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, limited to and arising out of alleged or actual exposures to any chemical listed pursuant to Proposition 65 in any product manufactured, distributed or sold by Defendant.

4.3 Defendant's Release of Plaintiff.

Defendant on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.4 Waiver of Civil Code § 1542.

Plaintiff, in his individual capacity only and not in his representative capacity, and Defendant knowingly, voluntarily and expressly waive and relinquish any and all rights that they may have

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2 under California Civil Code § 1542, or any similar provision or law of any jurisdiction or any similar
3 or analogous principle of common law. California Civil Code § 1542 provides:

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5 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
6 WHICH THE CREDITOR DID NOT KNOW OR SUSPECT TO
7 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING A
8 RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
9 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
10 THE DEBTOR."

11 Plaintiff, in his individual capacity only and not in his representative capacity, and Defendant
12 fully understand that if the facts with respect to the releases contained in this Agreement are found
13 hereafter to be other than or different from the facts they now believe to be true, they expressly accept
14 and assume the risk of such possible differences in facts regardless of any possible reason for such
15 possible differences in facts. Plaintiff, in his individual capacity only and not in his representative
16 capacity, and Defendant agree that the release contained in this Agreement shall remain in effect and
17 not subject to termination or rescission because of any such differences in facts.

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
21 after it has been fully executed by all Parties, in which event any monies that have been provided to
22 Dr. Held or his counsel pursuant to Section 3 above shall be refunded within fifteen (15) days after
23 receiving written notice from Defendant that the one-year period has expired.

24 **6. SEVERABILITY**

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

28 **7. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the state of California
and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant

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

4 **8. NOTICES**

5 Unless specified herein, all correspondence and notices required to be provided pursuant to
6 this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,
7 registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the
8 other party at the following addresses:

9 For Peter Thomas Roth Labs LLC:

10 Nada Shamonki, Esq.
11 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
12 2029 Century Park East, Suite 1370
Los Angeles, CA 90067

13 For Dr. Held:

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

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Dr. Held agrees to comply with the reporting form requirements referenced in California
25 Health & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to
26 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval
27 of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Defendant and
28 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

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timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

11. MODIFICATION

This Consent Judgment may be modified only by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

By: Anthony E. Held
Anthony E. Held, Ph.D., P.E.

AGREED TO:

By: Peter R
Peter Roth, President
Peter Thomas Roth Labs LLC

Date: 02/06/12

Date: 2-9-12