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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 MARIN COUNTY  
10 UNLIMITED CIVIL JURISDICTION  
11

12  
13 ANTHONY E. HELD, PhD., P.E.,

14 Plaintiff,

15 v.

16 CASHCO DISTRIBUTORS, INC.;;  
17 SEACLIFF BEAUTY PACKAGING &  
LABORATORIES; *et al.*,

18 Defendants.  
19

Case No. CIV1103668

**[PROPOSED] CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Anthony Held (“Held” or  
4 “Plaintiff”), and defendant, SeaCliff Beauty Packaging & Laboratories, Incorporated (“SeaCliff” or  
5 “Defendant”) with Held and SeaCliff referred to individually as a “Party”, and collectively as the  
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Held alleges that SeaCliff sold toiletry cases/bags containing the phthalate chemical di(2-  
17 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning  
18 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the  
19 state of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are toiletry cases/bags containing DEHP that  
22 are manufactured, distributed, and/or sold by SeaCliff, including, but not limited to, the cases/bags  
23 sold in connection with the *Good To Go Women’s Travel Kit (#8 93698 00202 5)* sold by Cashco  
24 Distributors, Inc. (hereinafter “Products”).

25 **1.6 Notices of Violation**

26 On or about May 4, 2011, Held served SeaCliff’s customer, Cashco Distributors, Inc.  
27 (“Cashco”), and various public enforcement agencies with a “60-Day Notice of Violation”  
28 (“Notice”), a document that informed the recipients that Cashco was allegedly in violation of

1 Proposition 65 for failing to warn its customers and consumers in California that the Products expose  
2 users to DEHP.

3       Thereafter, on or about September 1, 2011, Held served Cashco, SeaCliff and various public  
4 enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”), a  
5 document that included the additional allegation that Cashco’s supplier and manufacturer, SeaCliff,  
6 was also in violation of Proposition 65 for unwarned exposures to DEHP contained in the Products  
7 sold by SeaCliff and Cashco in California. The Notice and the Supplemental Notice shall  
8 collectively be referred to as the “Notices”. To the best of the parties’ knowledge no public enforcer  
9 has commenced and diligently prosecuted the allegations set forth in the Notices.

10       **1.7 Complaint**

11       On July 25, 2011, Held, acting in the public interest, filed the instant action against Cashco  
12 for the violations of Health & Safety Code § 25249.6 alleged in the Notice. Thereafter, on November  
13 7, 2011, following the conclusion of the applicable 60-day period, Held filed the First Amended  
14 Complaint (“Complaint”), the operative pleading in this action, adding SeaCliff as a defendant for the  
15 violations of Health and Safety Code § 25249.6 alleged in the Supplemental Notice.

16       **1.8 No Admission**

17       SeaCliff denies the material, factual, and legal allegations contained in the Notices and  
18 Complaint, and maintains that all of the products that it has sold in or which were distributed in  
19 California, including the Products, have been, and are, in compliance with all laws. Nothing in this  
20 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of  
21 law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed  
22 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same  
23 being specifically denied by SeaCliff. This section shall not, however, diminish or otherwise affect  
24 SeaCliff’s obligations, responsibilities, and duties under this Consent Judgment.

25       **1.9 Consent to Jurisdiction**

26       For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over SeaCliff as to the allegations contained in the Complaint, that venue is proper in the  
28

1 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this  
2 Consent Judgment.

3 **1.10 Effective Date**

4 As used throughout this Consent Judgment, the term “Effective Date” shall mean May 15,  
5 2012.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 Commencing on the Effective Date and continuing thereafter, SeaCliff shall only ship, sell, or  
8 distribute for sale in California Products that comply with the “DEHP Standard.” For purposes of  
9 this Consent Judgment, Products comply with the DEHP Standard where they contain maximum  
10 concentration of 1,000 parts per million (0.1%) DEHP when analyzed pursuant to U.S.  
11 Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent  
12 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a  
13 solid substance.

14 **3. MONETARY PAYMENTS**

15 **3.1 Civil Penalty Payment**

16 Pursuant to Health & Safety Code § 25249.7(b), SeaCliff shall pay a civil penalty of \$8,000.  
17 The penalty payment shall be allocated according to Health & Safety Code § 25249.12 (c)(1) & (d),  
18 with seventy-five percent (75%) of the penalty amount earmarked for the California Office of  
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%)  
20 of the penalty amount earmarked for Held.

21 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

22 The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
24 be resolved after the material terms of the agreement had been settled. Shortly after all other  
25 settlement terms had been finalized, SeaCliff expressed a desire to resolve the issue of Plaintiff’s fees  
26 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held  
27 and his counsel under general contract principles and the private attorney general doctrine codified at  
28

1 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees  
2 and costs incurred on appeal, if any.

3 Under these legal principles, SeaCliff shall pay \$28,000 for fees and costs incurred  
4 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be  
5 incurred) negotiating a settlement, drafting the motion for judicial approval, and moving the Court  
6 for, and obtaining its approval of, this Consent Judgment in the public interest.

### 7 **3.3 Payment Procedures**

#### 8 **3.3.1 Payments Held in Trust**

9 All payments made under this Consent Judgment shall be held in trust until such time  
10 as the Court approves this settlement. The Parties acknowledge that Held's counsel gave SeaCliff  
11 the option of depositing the funds into its attorney's trust account, but that SeaCliff elected to have  
12 The Chanler Group hold the settlement funds in its own trust account.

#### 13 **3.3.2 Payment Schedule**

14 (a) On or before May 11, 2012, SeaCliff shall deliver three checks for the  
15 following amounts made payable to:

16 (1) "The Chanler Group in Trust for OEHHA" in the amount of \$6,000;

17 (2) "The Chanler Group in Trust for Anthony Held" in the amount of  
18 \$2,000; and

19 (3) "The Chanler Group in Trust" in the amount of \$10,000;

20 (b) on or before June 1, 2012, SeaCliff shall deliver a fourth check to "The  
21 Chanler Group in Trust" in the amount of \$9,000; and

22 (c) on or before July 1, 2012, SeaCliff shall deliver a fifth check to "The Chanler  
23 Group in Trust" in the amount of \$9,000.

#### 24 **3.3.3 Issuance of 1099 Forms**

25 After this Consent Judgment has been fully executed by the Parties, SeaCliff shall  
26 provide Held's counsel with three 1099 forms for settlement payments made to:

27 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,  
28 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the amount of \$6,000;

1 (b) “Anthony Held” for civil penalties paid in the amount of \$2,000. Held’s  
2 address and tax identification number shall be furnished after this Consent Judgment is fully  
3 executed by the Parties; and

4 (c) “The Chanler Group” (EIN: 94-3171522) for fee and cost reimbursement in  
5 the amount of \$28,000.

6 **3.3.4 Payment Address**

7 All payments and tax forms required by this Consent Judgment shall be delivered to  
8 Held’s counsel at the following address:

9 The Chanler Group  
10 Attn: Proposition 65 Controller  
11 2560 Ninth Street  
12 Parker Plaza, Suite 214  
13 Berkeley, CA 94710

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

14 This Consent Judgment is a full, final, and binding resolution between Held, on his own  
15 behalf and in the public interest, and SeaCliff, of any violation of Proposition 65 that was or could  
16 have been asserted against SeaCliff, its parents, subsidiaries, affiliated entities under common  
17 ownership, directors, officers, employees, attorneys, and each downstream entity to whom SeaCliff  
18 directly or indirectly markets, distributes, or sells the Products, including, without limitation, its  
19 downstream distributors, wholesalers, customers (including, without limitation, Cashco as to any  
20 SeaCliff product it sold or distributed), retailers, franchisees, cooperative members, licensors, and  
21 licensees (collectively “Releasees”) arising out of unwarned exposures to DEHP contained in the  
22 Products sold by SeaCliff.

23 **4.2 Held’s Public Interest Release of Proposition 65 Claims**

24 This Consent Judgment is a full, final, and binding resolution between Held, on behalf of  
25 himself and in the public interest, and SeaCliff, of any violation of Proposition 65 that was or could  
26 have been asserted by Held against SeaCliff, its parents, subsidiaries, affiliated entities under  
27 common ownership, directors, officers, employees, attorneys, and each downstream entity to whom  
28 SeaCliff directly or indirectly markets, distributes or sells the Products including, without limitation,

1 its downstream distributors (Cashco), wholesalers, customers, retailers, franchisees, cooperative  
2 members, licensors, and licensees (“Releasees”), based on unwarned exposures to DEHP contained  
3 in the Products sold by SeaCliff.

#### 4 **4.3 Held’s Individual Release of SeaCliff**

5 Held, in his individual capacity only and *not* in his representative capacity, also provides a  
6 release to SeaCliff and the Releasees which shall be effective as a full and final accord and  
7 satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, whether  
8 known or unknown, suspected or unsuspected, arising out of exposures to DEHP contained in the  
9 Products sold by SeaCliff.

#### 10 **4.4 SeaCliff’s Release of Held**

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

### 17 **5. COURT APPROVAL**

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

### 24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to  
26 be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.  
27  
28

1       **7. GOVERNING LAW**

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

9       **8. NOTICES**

10          Unless specified herein, all correspondence and notices required to be provided pursuant to  
11 this Consent Judgment shall be in writing and sent by: (i) personally delivery; (ii) first-class,  
12 registered or certified mail, return receipt requested; or (ii) a recognized overnight courier by one  
13 Party to the other Party at following addresses:

14 For SeaCliff:

15           Vonda Simon, President  
16           SeaCliff Beauty Packaging & Laboratories, Incorporated  
17           17530 Von Karman Ave.  
18           Irvine, CA 92614

19           and

20           Barbara Adams, Esq.  
21           Adams Nye Becht LLP  
22           222 Kearny St., 7<sup>th</sup> Floor  
23           San Francisco, CA 94108

24 For Held:

25           Proposition 65 Coordinator  
26           The Chanler Group  
27           2560 Ninth Street  
28           Parker Plaza, Suite 214  
              Berkeley, CA 94710

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



1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Held agrees to comply with the reporting form requirements referenced in California Health  
7 & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &  
8 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent  
9 Judgment. In furtherance of obtaining such approval, Held and SeaCliff and their respective counsel  
10 agree to mutually employ their best efforts to support the entry of this agreement as a Consent  
11 Judgment and obtain judicial approval of the same in a timely manner. For purposes of this section,  
12 "best efforts" shall include, at a minimum, cooperating on the drafting and filing of any papers in  
13 support of the required motion for judicial approval.

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) the written agreement of the Parties and  
16 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
17 application of any Party and entry of a modified consent judgment by the Court.

18 **12. AUTHORIZATION**

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

21 **AGREED TO:**

**AGREED TO:**

22  
23 **APPROVED**  
Date: *By Anthony Held at 1:54 pm, Apr 30, 2012*

Date: 5-2-2012

24  
25  
26 By: *Anthony E. Held*  
27 Anthony E. Held, PhD., P.E.

By: *Vonda Simon*  
Vonda Simon, President  
SeaCliff Beauty Packaging & Laboratories,  
Incorporated