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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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14 ANTHONY E. HELD, PhD., P.E.,

15 Plaintiff,

16 v.

17 L.C. INDUSTRIES, INC.; *et al.*,

18 Defendants.
19

Case No. RG12616508

[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 E. Held, PhD., P.E.
4 (“Held”), and defendant, L.C. Industries, Inc. (“L.C. Industries”), with Held and L.C. Industries
5 collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are toiletry cases/bags manufactured,
21 distributed, sold, or offered for sale in California by L.C. Industries, including, but not limited to, the
22 *Lewis N Clark Gear Up And Go Pill Organizer Pouches, #700R (#0 29275 00051 5)* (hereinafter the
23 “Products”).

24 **1.6 Notice of Violation**

25 On or about May 4, 2011, Held served L.C. Industries and various public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
27 Held’s allegation that L.C. Industries was in violation of Proposition 65 for failing to warn its
28 customers and consumers in California that the Products expose users to DEHP.

1 **1.7 Complaint**

2 On February 9, 2012, Held filed the instant action against L.C. Industries (“Complaint”) for
3 the violations of Health & Safety Code § 25249.6 alleged in the Notice.

4 **1.8 No Admission**

5 L.C. Industries denies the material, factual, and legal allegations contained in the Notice and
6 Complaint, and maintains that all of the products that it has sold in California, including the Products,
7 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
8 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law;
9 nor shall compliance with this Consent Judgment constitute or be construed as an admission of any
10 fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied
11 by L.C. Industries. This section shall not, however, diminish or otherwise affect L.C. Industries’
12 obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over L.C. Industries as to the allegations in the Complaint, that venue is proper in
16 Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this
17 Consent Judgment.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 31, 2012.

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1 Reformulated Products**

22 L.C. Industries asserts that prior to the Effective Date, it began selling or distributing Products
23 in California that were Reformulated Products as defined in this section. Commencing on the
24 Effective Date and continuing thereafter, L.C. Industries hereby commits to continue to only import,
25 manufacture, sell or distribute for sale in California, Products that contain a maximum of 1,000 parts
26 per million (0.1%) DEHP content by weight in any accessible component (i.e., any component that
27 can be handled or touched during reasonably foreseeable use) when analyzed pursuant to EPA testing
28 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies

1 for the purpose of determining DEHP content in a solid substance (“Reformulated Products”).

2 **3. MONETARY PAYMENTS**

3 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

4 Pursuant to Health & Safety Code § 25249.7(b), L.C. Industries shall pay a civil penalty of
5 \$4,000. This amount reflects a credit of \$8,000 agreed to by Held in response to L.C. Industries’
6 commitment to Proposition 65 compliance, including reformulating the Products to comply with the
7 DEHP content standard established by section 2.

8 The penalty payment will be allocated according to Health & Safety Code § 25249.12 (c)(1)
9 & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office of
10 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five (25%) of the
11 penalty amount earmarked for Held.

12 **3.2 Reimbursement of Held’s Fees and Costs**

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

24 **3.3 Payment Procedures**

25 **3.3.1 Payments Held in Trust**

26 All payments made under this Consent Judgment shall be held in trust until the Court
27 approves the settlement. The Parties acknowledge that Held’s counsel gave L.C. Industries the
28 option of depositing the funds into its attorney’s trust account, but that L.C. Industries elected to

1 have The Chanler Group hold the settlement funds in trust until such time as the hearing of the
2 motion for judicial approval. Settlement funds delivered to The Chanler Group shall be in the form
3 of three checks for the following amounts, made payable as follows:

- 4 (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$3,000;
- 5 (b) to "The Chanler Group in Trust for Anthony Held" in the amount of \$1,000;
- 6 and
- 7 (c) to "The Chanler Group in Trust" in the amount of \$26,000.

8 **3.3.2 Issuance of 1099 Forms**

9 After the Consent Judgment has been approved, L.C. Industries shall issue three 1099
10 forms for the payments made pursuant sections 3.1 and 3.2, as follows:

- 11 (a) one 1099 form to "Office of Environmental Health Hazard Assessment", P.O.
12 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid in the
13 amount of \$3,000;
- 14 (b) a second 1099 form to "Anthony Held", whose address and tax identification
15 number shall be furnished upon request after this Consent Judgment has been fully
16 executed by the Parties, for civil penalties paid in the amount of \$1,000; and
- 17 (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the
18 reimbursement of Held's fees and costs in the amount of \$26,000.

19 **3.3.3 Payment Delivery**

20 All payments and tax forms required by this section shall be delivered on or before the
21 Effective Date to Held's counsel at the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Held's Public Release of Proposition 65 Claims**

Held acting on his own behalf and in the public interest releases L.C. Industries from all
claims for violations of Proposition 65 up through the Effective Date based on exposures to DEHP

1 from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
2 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as
3 set forth in the Notice.

4 **4.2 Held's Individual Release of Claims**

5 Held, in his individual capacity only and *not* in his representative capacity, also provides a
6 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
7 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
8 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
9 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products
10 imported, manufactured, sold or distributed for sale by L.C. Industries.

11 Dr. Held also, on behalf of himself and his agents, attorneys, representatives, successors and
12 assigns, in his respective individual capacity only and *not* in his representative capacity, provides a
13 general release of L.C. Industries which shall be effective as a full and final accord and satisfaction,
14 as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
15 claims, liabilities and demands of Dr. Held of any nature, character or kind, known or unknown,
16 suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the
17 Products as set forth in the Notice. Dr. Held acknowledges that he is familiar with Section 1542 of
18 the California Civil Code, which provides as follows:

19 **A general release does not extend to claims which the creditor does not**
20 **know or suspect to exist in his or her favor at the time of executing the**
21 **release, which if known by him or her must have materially affected his**
22 **or her settlement with the debtor.**

23 **4.3 L.C. Industries' Release of Held**

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

1 respect to the Products.

2 L.C. Industries also, on behalf of itself and its agents, attorneys, representatives, successors
3 and assigns, provides a general release of Dr. Held herein which shall be effective as a full and final
4 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys' fees, damages, losses, claims, liabilities and demands of L.C. Industries of any nature,
6 character or kind, known or unknown, suspected or unsuspected, relating to alleged violations of
7 Proposition 65 with respect to the Products as set forth in the Notice. L.C. Industries acknowledges
8 that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

9 **A general release does not extend to claims which the creditor does not**
10 **know or suspect to exist in his or her favor at the time of executing the**
11 **release, which if known by him or her must have materially affected his**
12 **or her settlement with the debtor.**

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
16 has been fully executed by all Parties.

17 **6. SEVERABILITY**

18 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to
19 be unenforceable, the validity of the remaining provisions shall not be adversely affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
23 otherwise rendered inapplicable by reason of law generally, or as to the Products, then L.C. Industries
24 may provide written notice to Held of any asserted change in the law, and shall have no further
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
26 so affected. Nothing in this Consent Judgment shall be interpreted to relieve L.C. Industries from any
27 obligation to comply with any pertinent state or federal toxics control laws.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For L.C. Industries:

6 Michael Smerling, President
7 L.C. Industries, Inc.
8 401 North Western Avenue, 4th Floor
9 Chicago, IL 60612

10 with a copy to:

11 Kerry Shea, Esq.
12 Aaron Colby, Esq.
13 Davis Wright Tremaine LLP
14 505 Montgomery St., Suite 800
15 San Francisco, CA 94111

16 For Held:

17 Proposition 65 Coordinator
18 The Chanler Group
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **10. POST EXECUTION ACTIVITIES**

 Held agrees to comply with the reporting form requirements referenced in California Health
& Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
settlement. In furtherance of obtaining such approval, Held and L.C. Industries and their respective
counsel agree to mutually employ their best efforts to support the entry of this agreement as a

1 Consent Judgment and to obtain judicial approval of the same in a timely manner. For purposes of
2 this section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the
3 moving papers and supporting the motion for judicial approval.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

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

11 **AGREED TO:**

AGREED TO:

12 **APPROVED**
13 Date: By Anthony Held at 1:33 pm, Jun 05, 2012

Date: _____

14 By: Anthony E Held
15 ANTHONY E HELD, PhD., P.E.

By: _____
Michael Smerling, President
L.C. INDUSTRIES, INC.

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1 Consent Judgment and to obtain judicial approval of the same in a timely manner. For purposes of
2 this section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the
3 moving papers and supporting the motion for judicial approval.

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6 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
7 application of any Party and the entry of a modified consent judgment by the Court.

8 **12. AUTHORIZATION**

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

11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: June 13, 2012

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15 By: _____
ANTHONY E. HELD, PhD., P.E.

By:  _____
Michael Smerling, President
L.C. INDUSTRIES, INC.

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