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

10
11 ANTHONY E. HELD, PhD., P.E,
12 Plaintiff,
13
14 v.
15 C.R.A. INT'L INDUSTRIAL INC., and
DOES 1-150, inclusive,
16 Defendants.

Case No. CIV1104616

[PROPOSED] CONSENT JUDGMENT

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Anthony Held, Ph.D.,
4 P.E., (“Held” or “Plaintiff”), and defendant, C.R.A. Int’l Industrial Inc. (“C.R.A. Int’l” or
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that C.R.A. Int’l has manufactured, distributed, and/or sold in the State of
16 California, footwear that expose users to di(2-ethylhexyl)phthalate (“DEHP”) (“Products”)
17 without first providing a “clear and reasonable warning” as required under Proposition 65. DEHP
18 is listed pursuant Proposition 65 as a chemical known to the State of California to cause birth
19 defects and/or other reproductive harm. DEHP is referred to hereinafter as the “Listed Chemical.”

20 **1.5 Notices of Violation**

21 On May 11, 2011, Held served C.R.A. Int’l and various public enforcement agencies with
22 a document entitled “60-Day Notice of Violation” (“Notice”) that provided the public enforcers
23 and C.R.A. Int’l with notice that C.R.A. Int’l was alleged to be in violation of Health & Safety
24 Code § 25249.6 for failing to warn its customers and consumers in California that the Products
25 expose users to DEHP.

26 **1.6 Complaint**

27 On September 16, 2011, Held, acting in a representative capacity in the interest of the
28 general public in California, filed the instant action (“Complaint”) naming C.R.A. Int’l as a

1 defendant, and stating a cause of action for the violations of Health & Safety Code § 25249.6
2 alleged in the Notice.

3 **1.7 No Admission**

4 This Consent Judgment resolves claims that are denied and disputed by Defendant. The
5 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
6 claims between the Parties for the purpose of avoiding prolonged litigation. C.R.A. Int'l denies
7 the material, factual, and legal allegations contained in the Notice and Complaint, and maintains
8 that all of the products it has manufactured, distributed, and/or sold in California, including the
9 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
10 shall be construed as an admission by C.R.A. Int'l of any fact, finding, conclusion of law, issue of
11 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by C.R.A. Int'l of any fact, finding, conclusion of law, issue of law, or
13 violation of law, the same being specifically denied by C.R.A. Int'l. However, this Section shall
14 not diminish or otherwise affect the Parties' obligations, responsibilities, and/or duties under this
15 Consent Judgment.

16 **1.8 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over C.R.A. Int'l as to the allegations contained in the Complaint, that venue is proper
19 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment.

21 **1.9 Execution Date**

22 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date
23 that this Consent Judgment is entered by the Court.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
26 this Consent Judgment is fully executed by the Parties.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Product Warnings**

3 Commencing on the Execution Date, C.R.A. Int'l shall not sell, ship, or offer to ship for
4 sale in California any Products containing the Listed Chemical unless such Products are: (1)
5 sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and
6 (b); or (2) exempt pursuant to Section 2.2 as compliant with the reformulation standards set forth
7 in Sections 2.3.

8 Each warning shall be prominently placed with such conspicuousness as compared with
9 other words, statements, designs, or devices as to render it likely to be read and understood by an
10 ordinary individual under customary conditions before purchase or use. Each warning shall be
11 provided in a manner such that the consumer or user understands to which specific Product the
12 warning applies, so as to minimize the risk of consumer confusion.

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

14 (i) **Product Labeling.** C.R.A. Int'l may affix a warning to the
15 packaging, labeling, or directly on any Products that are not Reformulated Products sold in retail
16 outlets in California that states:

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

20 Alternatively, when C.R.A. Int'l believes that there may be more than one Proposition 65
21 listed chemical in the Product, C.R.A. Int'l may affix a warning to the packaging, labeling, or
22 directly on each Product sold in California that states:

23 **WARNING:** This product contains chemicals known
24 to the State of California to cause birth
defects or other reproductive harm.

25 (ii) **Point-of-Sale Warnings.** Alternatively, C.R.A. Int'l may provide
26 warning signs in the form below to its retailers in California with instructions to post the signs in
27 close proximity to the point of display of any such Products for the benefit of its retailers'
28 customers.

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

Alternatively, when C.R.A. Int'l believes that there may be more than one Proposition 65 listed chemical in the Product, C.R.A. Int'l may provide warning signs in the form below:

WARNING: This product contains chemicals known to the State of California to cause birth defects or other reproductive harm.

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:

WARNING: The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm:

[list product(s) for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that C.R.A. Int'l sells any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Effective Date, C.R.A. Int'l shall provide a warning for such Products sold via mail order catalog or the Internet to California residents pursuant to section 2.1(a)(i) above, in the mail order catalog, or on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

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

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

1 Alternatively, when C.R.A. Int'l believes that there may be more than on Proposition 65
2 listed chemical in the Product, C.R.A. Int'l may use the following warning statement:

3 **WARNING:** This product contains chemicals known
4 to the State of California to cause birth
5 defects or other reproductive harm.

6 Where it is impracticable to provide the warning on the same page and in the same
7 location as the display and/or description of the Product, C.R.A. Int'l may utilize a designated
8 symbol to cross reference the applicable warning and shall define the term "designated symbol"
9 with the following language on the inside of the front or back cover of the catalog or on the same
10 page as any order form for the Product(s):

11 **WARNING:** Certain products identified with this symbol
12 ▼¹ and offered for sale in this catalog
13 contain DEHP, a phthalate chemical known
14 to the State of California to cause birth
15 defects or other reproductive harm.

16 The designated symbol must appear on the same page and in close proximity to the
17 display and/or description of the Product. On each page where the designated symbol appears,
18 C.R.A. Int'l must provide a header or footer directing the consumer to the warning language and
19 definition of the designated symbol.

20 (ii) **Internet Website Warning.** A warning may be given in
21 conjunction with the sale of the Products via the Internet, provided it is displayed to a purchaser
22 during the checkout process and appears either: (a) on the same web page on which a Product is
23 displayed; (b) on the same web page as the order form for a Product; or (c) on the same page as
24 the price for any Product.

25 **2.2 Exceptions to Warning Requirements**

26 The warning requirements set forth in Section 2.1 shall not apply to Reformulated
27 Products (as defined in Section 2.3 below).

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¹The symbol "▼" is to appear in the color red.

1 **2.3 Reformulation Commitment**

2 As of the Effective Date, C.R.A. Int'l shall not ship, sell or offer to be shipped for sale in
3 California any Products unless the Products contain less than or equal to 1,000 parts per million of
4 DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method
5 allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

6 **2.4 Vendor Notification Requirement**

7 To the extent is has not already done so, no more than thirty (30) days after the Effective
8 Date, C.R.A. Int'l shall provide the reformulation standards specified in section 2.3 for
9 Reformulated Products to any and all of its vendors of Products that will be sold or offered for
10 sale to California consumers, and shall instruct each vendor to use its best efforts to provide only
11 Reformulated Products, as such Products are defined in Section 2.3.

12 **3. MONETARY PAYMENTS**

13 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

14 C.R.A. Int'l shall make a payment of \$2,500 to be apportioned in accordance with Health
15 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
16 for the State of California's Office of Environmental Health Hazard Assessment and the
17 remaining 25% of these penalty monies earmarked for Anthony E. Held, Ph.D., P.E.

18 **3.2 Reimbursement of Plaintiff's Fees and Costs**

19 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
21 issue to be resolved after the material terms of the agreement had been settled. C.R.A. Int'l then
22 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
23 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
24 to Held and his counsel under general contract principles and the private attorney general
25 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
26 this matter, except fees that may be incurred on appeal. Under these legal principles, C.R.A.
27 Int'l shall pay the amount of \$28,000 for fees and costs incurred investigating, litigating and
28 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,

1 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

2 **3.3 Payment Procedures**

3 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
4 shall delivered on or before January 31, 2012, to The Chanler Group, and shall be held in trust
5 pending the Court's approval of this Consent Judgment.

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

- 7 (a) One check made payable to "The Chanler Group in Trust for
8 OEHHA" in the amount of \$1,875;
- 9 (b) One check made payable to "The Chanler Group in Trust for
10 Anthony Held" in the amount of \$625; and
- 11 (c) One check made payable to "The Chanler Group in Trust" in the
12 amount of \$28,000.

13 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
14 and the settlement funds have been transmitted to plaintiff's counsel, C.R.A. Int'l shall issue
15 three separate 1099 forms, as follows:

- 16 (a) The first 1099 shall be issued to the Office of Environmental Health
17 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
18 of \$1,875;
- 19 (b) The second 1099 shall be issued to Anthony Held in the amount of \$625,
20 whose address and tax identification number shall be furnished upon request; and
- 21 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522)
22 in the amount of \$28,000.

23 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
24 to the following payment address:

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

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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.2. Held's Release of Proposition 65 Claims**

3 In further consideration of the promises and agreements herein contained, Held acting on
4 his own behalf, his past and current agents, representatives, attorneys, including The Chanler
5 Group, successors, and/or assignees, and in the public interest releases Defendant from all
6 claims for violation of Proposition 65 with respect to exposures to the Listed Chemical from the
7 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
8 constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical
9 from the Products as set forth in the Notice.

10 **4.3 C.R.A. Int'l's Release of Held**

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

17 **5. SEVERABILITY**

18 If, subsequent to the Court's approval of this Consent Judgment, any of the provisions
19 contained herein are held by a court to be unenforceable, the validity of the enforceable provisions
20 remaining shall not be adversely affected unless the Court finds that any unenforceable provision
21 is not severable from the remainder of the Consent Judgment.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
25 months after it has been fully executed by the Parties. In the event this consent judgment is (a)
26 not entered by this Court within one year (or thereafter) for any reason whatsoever, or (b) is
27 entered by the Court and subsequently overturned by any appellate court, any monies that have
28 been provided to Held, or his counsel pursuant to Sections 3 and 4 above, together with interest at

1 the prevailing federal rate accruing from the date of payment by Defendant, shall be refunded
2 within thirty (30) days after receiving written demand from Defendant for return of such funds.

3 **7. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
6 reason of law generally, or as to the Products, then C.R.A. Int'l shall provide written notice to
7 Held of any asserted change in the law, and shall have no further obligations pursuant to this
8 Consent Judgment with respect to, and to the extent that, the Products are so affected.

9 **8. NOTICE**

10 When any party is entitled to receive any notice under this Consent Judgment, the notice
11 shall be sent by certified mail to the person(s) identified below:

12 To C.R.A. Int'l:

13 David Wang, President
14 C.R.A. Int'l Industrial Inc.
521 Atlas Avenue
Monterey Park, CA 91755

15 To Held:

16 The Chanler Group
17 Attn: Proposition 65 Coordinator
2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

19 Any party may modify the person and/or address to which notice is to be sent by informing each
20 other party of its intent by certified mail and/or other verifiable form of written communication.

21 **9. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
23 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
24 Court.

25 **10. ADDITIONAL POST-EXECUTION ACTIVITIES**

26 Held agrees to comply with the reporting form requirements referenced in California
27 Health & Safety Code §25249.7(f). The Parties further acknowledge that, pursuant to Health &
28 Safety Code §25249.7(f)(4), a noticed motion is required to obtain judicial approval of this

1 Consent Judgment. In furtherance of obtaining such approval, Held and C.R.A. Int'l and their
2 respective counsel agree to mutually employ their best efforts to support the entry of this
3 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
4 timely manner. For purposes of this paragraph, "best efforts" shall include, at a minimum,
5 cooperating on the drafting and filing any papers in support of the required motion for judicial
6 approval.

7 **11. ENTIRE AGREEMENT**

8 This Consent Judgment contains the sole and entire agreement and understanding of the
9 Parties. No representations, oral or otherwise, express or implied, other than those contained
10 herein, have been made by any party hereto. No other agreements shall be deemed to exist or to
11 bind any of the parties.

12 **12. COUNTERPARTS, FACSIMILE SIGNATURES**

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

16 **13. AUTHORIZATION**

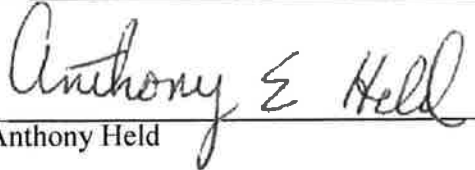
17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.

20 **AGREED TO:**

AGREED TO:

21 Dated: 02/07/2012

Dated: _____

22
23 By: 
24 Anthony Held

By: _____
David Wang, President
C.R.A. Int'l Industrial Inc.

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2 respective counsel agree to mutually employ their best efforts to support the entry of this
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17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.

20 **AGREED TO:**

AGREED TO:

21 Dated: _____

Dated: 2-7-12

22
23
24 By: _____
Anthony Held

By: 
David Wang, President
C.R.A. Int'l Industrial Inc.