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Attorneys for Plaintiff
5 ANTHONY E. HELD, PH.D., P.E.

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF MARIN
8 UNLIMITED CIVIL JURISDICTION
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10 ANTHONY E. HELD, PH.D., P.E.,
11 Plaintiff,
12
13 v.
14 FRANCO AMERICAN NOVELTY
COMPANY LLC; and DOES 1-150, inclusive,
15 Defendants.

Case No. CIV1106344

[PROPOSED] CONSENT JUDGMENT

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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Franco American Novelty Company LLC**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and defendant Franco American Novelty Company LLC
5 (“Franco American”), with Plaintiff and Defendant collectively referred to as the “Parties” and
6 each individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Franco American manufactured, imported, distributed, sold and/or
17 offered for sale gloves containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California
18 without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to
19 Proposition 65 as known to the State of California to cause birth defects and other reproductive
20 harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as gloves containing
23 DEHP including, but not limited to, *Urban Wear Studded Jewelry Collection Gloves, #30067*
24 *(#0 91346 30067 1)*, which Franco American manufactured, imported, distributed, sold and/or
25 offered for sale in the State of California, hereinafter referred to as the “Products.”
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1 **1.6 Notice of Violation**

2 On September 19, 2011, Dr. Held served Franco American and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that
4 provided the recipients with notice of alleged violations of Proposition 65 for failing to warn
5 consumers that the Products exposed users in California to DEHP. To the best of the Parties’
6 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set
7 forth in the Notice.

8 **1.7 Complaint**

9 On or about December 30, 2011, Dr. Held, who was and is acting in the interest of the
10 general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court
11 in and for the County of Marin against Franco American and Does 1 through 150, alleging, *inter*
12 *alia*, violations of Proposition 65 based on the alleged exposures to DEHP contained in the
13 Products.

14 **1.8 No Admission**

15 Franco American denies the material factual and legal allegations contained in Dr.
16 Held's Notice and Complaint and maintains that all Products sold and distributed in California
17 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
18 construed as an admission by Franco American of any fact, finding, issue of law, or violation of
19 law; nor shall compliance with this Consent Judgment constitute or be construed as an
20 admission by Franco American of any fact, finding, conclusion, issue of law, or violation of
21 law, such being specifically denied by Franco American. However, this section shall not
22 diminish or otherwise affect Franco American’s obligations, responsibilities, and duties under
23 this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Franco American as to the allegations contained in the Complaint, that venue is
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1 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean September
5 15, 2012.

6 **2. INJUNCTIVE RELIEF: REFORMULATION**

7 As of the Effective Date, Franco American shall only manufacture, import, distribute,
8 sell and/or offer for sale in California Products that are “DEHP Free.” For purposes of this
9 Consent Judgment, “DEHP Free” Products shall mean Products containing components that can
10 be handled, touched or mouthed by a consumer, and which components yield less than 1000
11 parts per million (“ppm”) (0.1%) of DEHP when analyzed pursuant to Environmental Protection
12 Agency testing methodologies 3580A and 8270C.

13 **3. MONETARY PAYMENTS**

14 **3.1 Civil Penalty Payments**

15 Pursuant to Health & Safety Code § 25249.7(b), Franco American shall pay civil penalties
16 totaling \$14,000 in penalty payments and credits. Franco American shall pay an initial civil
17 penalty of \$4,000. Thereafter, Franco American shall receive a penalty credit of \$10,000 upon
18 providing Dr. Held’s counsel with written certification that, as September 1, 2012, one hundred
19 percent of Franco American’s Products sold in California are DEHP Free Products as defined by
20 Section 2 of this Consent Judgment.

21 The penalty payments will be allocated according to Health & Safety Code § 25249.12
22 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California
23 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five
24 (25%) of the penalty amount earmarked for Dr. Held.

25 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

26 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
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1 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
2 Franco American then expressed a desire to resolve the fee and cost issue shortly after the other
3 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
4 the compensation due to Dr. Held and his counsel under general contract principles and the
5 private attorney general doctrine codified at California Code of Civil Procedure §1021.5, for all
6 work performed in this matter, except fees that may be incurred on appeal. Under these legal
7 principles, Franco American shall pay the amount of \$22,500 for fees and costs incurred
8 investigating, litigating and enforcing this matter, including the fees and costs incurred (and
9 yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
10 Judgment in the public interest.

11 **3.3 Payment Procedures**

12 **3.3.1 Funds Held In Trust.** All payments required by Sections 3.1 and 3.2
13 shall delivered on or before the Effective Date to either The Chanler Group or the attorney of
14 record for Franco American and shall be held in trust pending the Court's approval of this
15 Consent Judgment.

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

- 17 (a) One check made payable to "The Chanler Group in Trust for
18 OEHHA" in the amount of \$3,000;
19 (b) One check made payable to "The Chanler Group in Trust for
20 Anthony E. Held" in the amount of \$1,000; and
21 (c) One check made payable to "The Chanler Group in Trust" in the
22 amount of \$22,500.

23 Payments delivered to Hewitt Wolensky shall be made payable, as follows:

- 24 (a) One check made payable to "Hewitt Wolensky LLP in Trust
25 for OEHHA" in the amount of \$3,000;
26 (b) One check made payable to "Hewitt Wolensky LLP in Trust
27 for Anthony E. Held" in the amount of \$1,000; and
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- (c) One check made payable to “Hewitt Wolensky LLP in Trust for The Chanler Group” in the amount of \$22,500.

If Franco American elects to deliver payments to its attorney of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within two days of the date of the hearing on which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$3,000;
- (b) One check made payable to “The Chanler Group in Trust for Anthony E. Held” in the amount of \$1,000; and
- (c) One check made payable to “The Chanler Group” in the amount of \$22,500.

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, Franco American 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 \$3,000;
- (b) The second 1099 shall be issued to Anthony E. Held in the amount of \$1,000, 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 \$22,500.

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

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

8 Dr. Held acting on his own behalf and in the public interest releases Franco American
9 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
10 to DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
12 Products as set forth in the Notice.

13 **4.2 Dr. Held's Individual Release of Claims**

14 Dr. Held also, in his individual capacity only and *not* in his representative capacity,
15 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
16 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
17 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
18 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
19 DEHP in the Products manufactured, imported, distributed, sold and/or offered for sale by Franco
20 American.

21 **4.3 Franco American's Release of Dr. Held**

22 Franco American on behalf of itself, its past and current agents, representatives,
23 attorneys, successors, and/or assignees, hereby waives any and all claims against Dr. Held, his
24 attorneys and other representatives, for any and all actions taken or statements made (or those
25 that could have been taken or made) by Dr. Held and his attorneys and other representatives,
26 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
27 against it in this matter with respect to the Products.
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1 **5. 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 Dr. Held or his counsel pursuant to Section 3 above, shall be refunded within fifteen
6 (15) days after receiving written notice from Franco American that the one-year period has
7 expired.

8 **6. 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 **7. 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
15 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
16 Franco American shall provide written notice to Dr. Held of any asserted change in the law, and
17 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
18 extent that, the Products are so affected.

19 **8. NOTICES**

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

24 To Franco American:

25 Elizabeth McNulty
26 Hewitt Wolensky, LLP
27 4041 MacArthur Blvd., Suite 300
28 Newport Beach, CA 92660

To Dr. Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

1 With a copy to:

2 Michele Oumano Powell, Vice President
3 Franco American Novelty Company LLC
4 8400 72nd Drive
5 Glendale, NY 11385

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or portable
10 document format (“.pdf”), each of which shall be deemed an original, and all of which, when
11 taken together, shall constitute one and the same document. A facsimile or .pdf signature shall
12 be as valid as the original.

13 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

16 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The Parties agree to mutually employ their and their counsel’s reasonable best efforts to
18 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
19 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
20 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
21 approval of this Consent Judgment, which Dr. Held shall file, and which Franco American shall
22 not oppose. If any third party objection to the noticed motion is filed, Dr. Held and Franco
23 American shall work together to file a joint reply and appear at any hearing before the Court. If
24 the Superior Court does not approve the motion to approve this Consent Judgment, and the
25 Parties choose not to pursue a modified Consent Judgment within 30 days of said denial, or in
26 the event that the Superior Court approve this Consent Judgment and any person successfully
27 appeals that approval, all payments made pursuant to this Consent Judgment will be returned to
28 Franco American.

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12. 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.

13. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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:

AGREED TO:

Date: **APPROVED**
By Tony Held at 11:49 am, Sep 11, 2012

Date: _____

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

By: _____
Michele Oumano Powell, Vice President
Franco American Novelty Company LLC

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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:

AGREED TO:

Date: _____

Date: 9/11/12

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

By: Michele Oumano Powell
Michele Oumano Powell, Vice President
Franco American Novelty Company LLC