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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SANTA CLARA  
11 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E., )

13 Plaintiff, )

14 v. )

15 KIMBERLY-CLARK CORPORATION; and )  
16 DOES 1-150, inclusive, )

17 Defendants. )  
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Case No. 114CV271097

**[PROPOSED] CONSENT JUDGMENT**

Action Filed: September 25, 2014

1           **1. INTRODUCTION**

2           **1.1 Anthony E. Held, Ph.D., P.E. and Kimberly-Clark Corporation**

3           This Consent Judgment (or “Agreement”) is entered into by and between plaintiff Anthony  
4           E. Held, Ph.D., P.E. (“Held” or “Plaintiff”) and defendant Kimberly-Clark Corporation (“Kimberly-  
5           Clark” or “Defendant”), with Plaintiff and Defendant collectively referred to as the “parties.”

6           **1.2 Anthony E. Held, Ph.D., P.E.**

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

10          **1.3 Kimberly-Clark Corporation**

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

14          **1.4 General Allegations**

15          Held alleges that Kimberly-Clark has manufactured, imported, distributed and/or sold in the  
16          State of California hearing protection with vinyl/PVC components containing di(2-ethylhexyl)  
17          phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
18          California to cause birth defects and other reproductive harm.

19          **1.5 Product Description**

20          The products that are covered by this Consent Judgment are defined as hearing protection  
21          with vinyl/PVC components containing DEHP including, but not limited to, *Silencio Hearing*  
22          *Protection Original Earmuff, Model Number: RBW-71, UPC #0 38714 10103 4* and *Smith &*  
23          *Wesson Suppressor Ear Muffs, JS# 3011832, KC# 19953, UPC #7 97680 09013 0*, and *Onyx 23*  
24          *Earmuff Hearing Protector, JS #3015085, KC #20771, UPC #7 61445 02860 7*, which are  
25          manufactured, imported, distributed, sold and/or offered for sale by Kimberly-Clark in the State of  
26          California, hereinafter the “Products.”

27          **1.6 Notices of Violation**

28          On October 18, 2013, Held served Kimberly-Clark Corporation and various public  
enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that

1 provided the recipients with notice that Kimberly-Clark was in violation of California Health &  
2 Safety Code § 25249.6 for failing to warn consumers that its hearing protection with vinyl/PVC  
3 components including, but not limited to, *Silencio Hearing Protection Original Earmuff, Model*  
4 *Number: RBW-71, UPC #0 38714 10103 4*, exposed users in California to DEHP.

5 On April 30, 2014, Held served Kimberly-Clark Corporation and various public  
6 enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation”  
7 (“Notice”) that provided the recipients with notice of allegations that Kimberly-Clark was in  
8 violation of California Health & Safety Code § 25249.6 for failing to warn consumers that its  
9 hearing protection with vinyl/PVC components including, but not limited to, *Silencio Hearing*  
10 *Protection Original Earmuff, Model Number: RBW-71, UPC #0 38714 10103 4, Smith & Wesson*  
11 *Suppressor Ear Muffs, JS# 3011832, KC# 19953, UPC #7 97680 09013 0* and *Onyx 23 Earmuff*  
12 *Hearing Protector, JS #3015085, KC #20771, UPC #7 61445 02860 7*, exposed users in California  
13 to DEHP.

#### 14 **1.7 Complaint**

15 On September 25, 2014, Held filed a complaint in the Superior Court in and for the County  
16 of Santa Clara against Kimberly-Clark and Does 1 through 150, *Held v. Kimberly-Clark*  
17 *Corporation, et al.*, Case No. 114CV271097 (the “Action”), alleging violations of California  
18 Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain  
19 hearing protection with vinyl/PVC components sold by Kimberly-Clark in the State of California.

#### 20 **1.8 No Admission**

21 Kimberly-Clark denies the material, factual and legal allegations contained in Held’s  
22 Notices and Complaint and maintains that all products that it has sold, manufactured, imported  
23 and/or distributed in California, including the Products, have been and are in compliance with all  
24 laws. Nothing in this Consent Judgment shall be construed as an admission by Kimberly-Clark of  
25 any fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment  
26 constitute or be construed as an admission by Kimberly-Clark of any fact, finding, conclusion, issue  
27 of law or violation of law. However, this section shall not diminish or otherwise affect Kimberly-  
28 Clark’s obligations, responsibilities and duties under this Consent Judgment.

1           **1.9 Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
3 jurisdiction over Kimberly-Clark as to the allegations contained in the Complaint, that venue is  
4 proper in the County of Santa Clara and that this Court has jurisdiction to enter and enforce the  
5 provisions of this Consent Judgment.

6           **1.10 Effective Date**

7           For purposes of this Consent Judgment, the term “Effective Date” shall mean November 15,  
8 2014.

9           **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

10          **2.1 Reformulation Standards**

11          “Reformulated Products” are defined as those Products containing DEHP in concentrations  
12 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental  
13 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by  
14 federal or state government agencies for the purpose of determining DEHP content in a solid  
15 substance.

16          **2.2 Reformulation Commitment or Warnings**

17          As of the Effective Date all Products manufactured, imported, distributed, sold and/or  
18 offered for sale in the State of California by Kimberly-Clark shall be either (a) Products that qualify  
19 as Reformulated Products as defined in Section 2.1 above; or (b) shall bear appropriate Proposition  
20 65 health hazard warnings as described in Section 2.3 below. Products already in the stream of  
21 commerce, including Products manufactured, imported, distributed, or sold by Kimberly-Clark prior  
22 to the Effective Date shall be exempt from Section 2.3 product warnings.

23          **2.3 Product Warnings**

24          As of the Effective Date, Kimberly-Clark shall provide clear and reasonable warnings for all  
25 Products as set forth in subsections 2.3(a) and (b) that do not qualify as Reformulated Products.  
26 Each warning shall be prominently placed with such conspicuousness as compared with other  
27 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
28 individual under customary conditions before purchase or use. Each warning shall be provided in a

1 manner such that the consumer or user understands to which *specific* Product the warning applies,  
2 so as to minimize the risk of consumer confusion.

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

4 (i) **Product Labeling.** Kimberly-Clark shall affix a warning to the packaging,  
5 labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

8 (ii) **Point-of-Sale Warnings.** Alternatively, Kimberly-Clark may provide  
9 warning signs in the form below to its customers in California with instructions to post the warnings  
10 in close proximity to the point of display of the Products. Such instruction sent to Kimberly-Clark's  
11 customers shall be sent by certified mail, return receipt requested.

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

14 Where more than one Product is sold in proximity to other like items or to those that do not require  
15 a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be  
16 used:<sup>1</sup>

17 **WARNING:** The following products contain DEHP, a phthalate  
18 Chemical, known to the State of California  
to cause birth defects and other reproductive harm:  
19 [*list products for which warning is required*]

20 (b) **Mail Order Catalog and Internet Sales.** In the event that Kimberly-Clark sells  
21 Products via mail order catalog and/or the internet, to customers located in California, after the  
22 Effective Date, that are not Reformulated Products, Kimberly-Clark shall provide warnings for such  
23 Products sold via mail order catalog or the internet to California residents. Warnings given in the  
24 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies  
25 as further specified in Sections 2.3(b)(i) and (ii).

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<sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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

5                   **WARNING:** This product contains DEHP, a phthalate  
6                                   chemical known to the State of California  
7                                   to cause birth defects and other reproductive harm.

8                   Where it is impracticable to provide the warning on the same page and in the same location  
9 as the display and/or description of the Product, Kimberly-Clark may utilize a designated symbol to  
10 cross reference the applicable warning and shall define the term “designated symbol” with the  
11 following language on the inside of the front cover of the catalog or on the same page as any order  
12 form for the Product(s):

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

17                   The designated symbol must appear on the same page and in close proximity to the display  
18 and/or description of the Product. On each page where the designated symbol appears, Kimberly-  
19 Clark must provide a header or footer directing the consumer to the warning language and definition  
20 of the designated symbol.

21                   (ii)     **Internet Website Warning.** A warning shall be given in conjunction with  
22 the sale of the Products by Kimberly-Clark via the internet, which warning shall appear either: (a)  
23 on the same web page on which a Product is displayed; (b) on the same web page as the order form  
24 for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
25 displayed to a purchaser during the checkout process. The following warning statement shall be  
26 used and shall appear in any of the above instances adjacent to or immediately following the  
27 display, description, or price of the Product for which it is given in the same type size or larger than  
28 the Product description text:

29                   **WARNING:** This product contains DEHP, a phthalate  
30                                   chemical known to the State of California  
31                                   to cause birth defects and other reproductive harm.

1           Alternatively, the designated symbol may appear adjacent to or immediately following the  
2 display, description, or price of the Product for which a warning is being given, provided that the  
3 following warning statement also appears elsewhere on the same web page, as follows:

4                   **WARNING:** This product contains DEHP, a phthalate  
5                                   chemical known to the State of California  
6                                   to cause birth defects and other reproductive harm.

6       **3. MONETARY PAYMENTS**

7           **3.1 Civil Penalty Payments**

8           In settlement of all the claims referred to in this Consent Judgment, Kimberly-Clark shall  
9 pay a total of \$3,000 in civil penalties in accordance with this Section. Each penalty payment will  
10 be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%  
11 of the funds remitted to the California Office of Environmental Health Hazard Assessment  
12 (“OEHHA”) and the remaining 25% of the penalty remitted to Held. Each penalty payment shall be  
13 made within five business days after this Agreement is approved by the Court and be delivered to  
14 the addresses listed in Section 3.3 below. Kimberly-Clark shall be liable for payment of interest, at  
15 a rate of 10% simple interest, for all amounts due and owing under this Agreement that are not  
16 received within two business days of the due date. Kimberly-Clark shall issue two separate checks  
17 for the civil penalty payments to: (a) “OEHHA” in the amount of \$2,250; and (b) “Dr. Anthony E.  
18 Held, Ph.D., P.E., Client Trust Account” in the amount of \$750.

19           **3.2 Reimbursement of Fees and Costs**

20           The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
22 issue to be resolved after the material terms of the agreement had been settled. Held then  
23 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
24 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held  
25 and his counsel under general contract principles and the private attorney general doctrine codified  
26 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
27 execution of this agreement. Kimberly-Clark shall, within five business days of the date this  
28 Agreement is approved by the Court shall issue a check payable to “The Chanler Group” in the

1 amount of \$28,000 and send such check to the address found in Section 3.3.1(a), below. The  
2 Chanler Group shall cooperate with Defendant by providing such taxpayer information as is  
3 needed to process the payments within thirty days of when this Agreement is scheduled to be  
4 presented to the Court for approval or within thirty days of Defendant's written request for  
5 taxpayer information.

6 **3.3 Payment Procedures**

7 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

8 (a) All payments owed to Held and his counsel, pursuant to Sections 3.1  
9 through 3.2, shall be delivered to the following payment address:

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

15 (b) All payments owed to OEHHHA, pursuant to Sections 3.1 through 3.2,  
16 shall be delivered directly to OEHHHA (Memo line "Prop 65 Penalties")  
17 at the following addresses:

18 For United States Postal Service Delivery:

19 Mike Gyurics  
20 Fiscal Operations Branch Chief  
21 Office of Environmental Health Hazard Assessment  
22 P.O. Box 4010  
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyurics  
26 Fiscal Operations Branch Chief  
27 Office of Environmental Health Hazard Assessment  
28 1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHHA mailed to The Chanler  
Group at the address set forth above in 3.3.1(a), as proof of payment to  
OEHHHA.



1       **4. CLAIMS COVERED AND RELEASED**

2               **4.1 Held’s Public Release of Proposition 65 Claims**

3               Held, acting on his own behalf and in the public interest, releases Kimberly-Clark and its  
4               parents, subsidiaries, affiliated entities under common ownership (including Jackson Safety LLC),  
5               directors, officers, employees, and attorneys (“Releasees”) and each entity to whom they directly or  
6               indirectly distribute or sell the Products including, but not limited to, their downstream distributors,  
7               wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees  
8               (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures  
9               to DEHP from the Products manufactured, imported, distributed or sold by Kimberly-Clark prior to  
10              the Effective Date, as set forth in the Notices and Complaint. Compliance with the terms of this  
11              Consent Judgment constitutes compliance with Proposition 65 by Defendant, Defendant Releasees,  
12              and Downstream Releasees with respect to exposures to DEHP from Products as set forth in the  
13              Notices of Violation.

14              **4.2 Held’s Individual Release of Claims**

15              Held, in his individual capacity only and *not* in his representative capacity, also provides a  
16              release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
17              final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
18              attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or  
19              kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
20              exposures to DEHP in the Products manufactured, imported, distributed or sold by Defendants  
21              before the Effective Date.

22              **4.3 Kimberly-Clark’s Release of Held**

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

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 year  
4 after it has been fully executed by all parties.

5       **6. SEVERABILITY**

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

9       **7. GOVERNING LAW**

10          The terms of this Consent Judgment shall be governed by the laws of the State of California  
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or  
12 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
13 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or  
14 preemption or rendered inapplicable by reason of law generally as to the Products, then Kimberly-  
15 Clark shall provide written notice to Held of any asserted change in the law, and shall have no  
16 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
18 Kimberly-Clark from any obligation to comply with any pertinent state or federal toxics control  
19 law.

20       **8. NOTICES**

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

25                   To Kimberly-Clark Corporation:

26                   Attention: Vice-President & Deputy  
27                   General Counsel, Litigation  
28                   Kimberly-Clark Corporation  
                    2300 Winchester Road  
                    Neenah, WI 54956

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

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

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With a copy to:

Judith Praitis, Esq.  
Sidley Austin LLP  
555 West 5<sup>th</sup> Street, 39<sup>th</sup> Floor  
Los Angeles, CA 90013

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent. Courtesy notices may be delivered by e-mail but the effective date of such notice for purposes of this Consent Judgment shall be the date of receipt.

**9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. 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. The Attorney General shall be served with any motion to modify this Consent Judgment.

1     **12.    AUTHORIZATION**

2           The undersigned are authorized to execute this Consent Judgment on behalf of their  
3     respective parties and have read, understood and agree to all of the terms and conditions of this  
4     Consent Judgment.

5  
6     AGREED TO:

AGREED TO:

7  
8     Date: November 21, 2014

Date: 11-19-14

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

By: *Mike Flagg*  
Mike Flagg  
Vice President  
Kimberly-Clark Professional,  
North America