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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.

19 SPILL STOP MFG., L.L.C.; and DOES 1-150,
20 inclusive,

21 Defendants.

Case No.: RG14735022

[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, Ph.D., P.E.
4 (“Held”), and defendant, Spill Stop Mfg., L.L.C. (“Spill Stop”), with Held and Spill Stop each
5 individually referred to as a “Party” and collectively 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 Spill Stop employs ten or more persons and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Spill Stop imports, sells, or distributes for sale in the State of California,
16 bottle openers and shakers with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”)
17 without first providing the clear and reasonable warning required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or
19 other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are (1) bottle openers with
22 vinyl/PVC grips containing DEHP sold in California or distributed for sale in California by Spill
23 Stop, including, but not limited to, the *Vinyl Coated Opener, #13-358, SPI13358, UPC #7 55141*
24 *13358 1* (hereinafter, “Products”); and (2) shakers with vinyl/PVC grips containing DEHP, including,
25 but not limited to, the *Vinyl Shaker, #103-30, UPC #7 55141 10330 0* (“Additional Products”).

26 **1.6 Notice of Violation**

27 On or about October 18, 2013, Held served Spill Stop and certain requisite public
28 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Spill Stop was in

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

3 **1.7 Complaint**

4 On or about July 31, 2014, Held filed the instant action (“Complaint”), naming Spill Stop as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Spill Stop denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products and the Additional Products, have been, and are, in compliance
11 with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact,
12 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
13 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of
14 law, or violation of law. This Section shall not, however, diminish or otherwise affect Spill Stop’s
15 obligations, responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Spill Stop as to the allegations in the Complaint, that venue is proper in Alameda,
19 and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment
20 pursuant to Code of Civil Procedure section 664.6 and Proposition 65.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means five (5) days after
23 plaintiff’s counsel provides written notice to Defendant’s counsel that the Court has entered this
24 Consent Judgment as contemplated by Section 5.

25 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date, and continuing thereafter, Spill Stop shall only purchase
28 for sale in California or distribute for sale in California, i) Reformulated Products, or ii) Products or

1 Additional Products which have a compliant Proposition 65 warning on the product or its packaging.
2 For purposes of this Consent Judgment, “Reformulated Products” are Products or Additional
3 Products that contain a maximum DEHP concentration of 1,000 parts per million (0.1%) when
4 sampled and analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
5 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose
6 of determining DEHP content in a solid substance.

7 **2.2 Clear and Reasonable Warnings**

8 Commencing on the Effective Date, for all Products and/or Additional Products that are not
9 Reformulated Products, Spill Stop agrees that it will only offer such Products for sale in California
10 with a clear and reasonable warning pursuant to this Section. Spill Stop further agrees that the
11 warning will be prominently placed with such conspicuousness as compared with other words,
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary
13 individual under customary conditions before use. For purposes of this Consent Judgment, a clear
14 and reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to
15 the Product or Additional Product, containing language consistent with the following statement:

16 **WARNING: Proposition 65:** This product contains chemicals
17 known to the State of California to cause cancer
and/or birth defects or other reproductive harm.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payments**

20 Pursuant to Health & Safety Code section § 25249.7(b), Spill Stop shall pay \$2,000 in civil
21 penalties as described herein. Each penalty payment shall be allocated according to Health and
22 Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California
23 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
24 penalty paid to Held.

25 **3.1.1 Initial Civil Penalty**

26 Within five days of the Effective Date, Spill Stop shall make an initial civil penalty
27 payment of \$1,000. Spill Stop shall provide its payment in two checks for the following amounts
28

1 made payable to: (a) “OEHHA” in the amount of \$750; and (b) “The Chanler Group in Trust for
2 Anthony Held” in the amount of \$250.

3 **3.1.2 Final Civil Penalty**

4 Within 30 days after the Effective Date, Spill Stop shall make a final civil penalty
5 payment of \$1,000 apportioned as described in Section 3.1.1, above, unless such penalty is waived in
6 accord with this paragraph. Pursuant to Title 11 California Code of Regulations section 3203(c), the
7 final civil penalty payment will be waived in its entirety if, no later than five (5) days after the
8 Effective Date, a manager of Spill Stop provides Held’s counsel with written certification that, as of
9 the date of its certification, one-hundred percent (100%) of the Products and Additional Products
10 Spill Stop sells into California or ships for sale in California are Reformulated Products as defined by
11 Section 2.1, and that Spill Stop will continue to offer only Reformulated Products in California in the
12 future. The option to certify reformulation in lieu of making the final civil penalty payment
13 constitutes a material term of this Consent Judgment, and with regard to such term, time is of the
14 essence.

15 **3.2 Reimbursement of Fees and Costs**

16 The parties acknowledge that Held and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
18 be resolved after the material terms of this Consent Judgment had been settled. The Parties then
19 reached an accord on the compensation due to Held and his counsel under general contract principles
20 and the private attorney general doctrine codified at California Code of Civil Procedure
21 section 1021.5 for all work performed related to this matter. Under these legal principles, Spill Stop
22 shall reimburse Held and his counsel \$13,000 for the fees and costs incurred and yet to be incurred
23 investigating, bringing this matter to the attention of Spill Stop’s management, negotiating a
24 settlement and obtaining a court’s approval of this Consent Judgment in the public interest.

25 Spill Stop will satisfy all of the monetary obligations provided by this Consent Judgment, in
26 installments, as set forth in Section 3.3.4, below. The Parties agree, however, that in the event that
27 Spill Stop fails to make any payment required by this Consent Judgment, or any payment is delayed
28 by more than ten days, all amounts still owed will become due immediately.

1 **3.3 Payment Procedures**

2 **3.3.1 Payment Address for Held**

3 All payments to Held and his counsel under this Consent Judgment are to be
4 delivered to the following address:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

10 **3.3.2 Payment Addresses for OEHHA**

11 All payments to OEHHA under this Consent Judgment will be delivered directly to
12 OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses, as appropriate:

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery or Courier:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95812-4010

25 **3.3.3 Copy of the Payments to OEHHA**

26 Spill Stop agrees to provide Held’s counsel with a copy of the checks payable to
27 OEHHA, simultaneous with its penalty payments to Held, to be delivered to the address provided in
28 Section 3.3.1.

3.3.4 Payment Schedule

 All payments due under this Consent Judgment shall be delivered according to the
following schedule:

3.3.4(i) Spill Stop shall provide Held and OEHHA with their respective
portions of the initial and final (if required) civil penalty payment as required by Section 3.1.1. and
3.1.2, above.

1 **3.3.4(ii)** Within fifteen (15) days of the Effective Date, Spill Stop shall
2 provide Held’s counsel with a check for \$4,500 made payable to “The Chanler Group.” This
3 payment represents a portion of the total fee and cost reimbursement Spill Stop is required to make
4 pursuant to Section 3.2, above.

5 **3.3.4(iii)** Within forty-five (45) days of the Effective Date,, Spill Stop shall
6 provide Held’s counsel with another check for \$4,500 made payable to “The Chanler Group.” This
7 payment represents a portion of the total fee and cost reimbursement Spill Stop is required to make
8 pursuant to Section 3.2, above.

9 **3.3.4(iv)** Within seventy-five (75) days of the Effective Date,, Spill Stop
10 shall provide Held’s counsel with a check for \$4,000 made payable to “The Chanler Group.” This
11 payment represents the final installment toward the total fees and costs Spill Stop is required to make
12 pursuant to Section 3.2, above.

13 **3.3.4 Acceleration of Payments**

14 In the event that Spill Stop fails to make any payment under this Consent Judgment
15 within 10 days of the date that the obligation is due and owing, all sums payable under this Consent
16 Judgment, including any civil penalty and/or attorneys’ fee and cost reimbursement amounts, shall
17 become immediately due.

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Held’s Public Release of Proposition 65 Claims**

20 Held, acting on his own behalf and in the public interest, releases Spill Stop and its parents,
21 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
22 attorneys (“Releasees”) and each entity to whom they directly or indirectly distribute or sell the
23 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
24 franchisers, cooperative members, licensors and licensees and any other person or entity to whom
25 they directly or indirectly distribute, distributed, sell, or sold Product to including TriMark ERF Inc
26 and its affiliated entities. (“Downstream Releasees”), from any alleged or actual violation arising
27 under Proposition 65 for unwarned exposures to DEHP from the Products sold by Spill Stop prior to
28 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment

1 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
2 and the Additional Products.

3 In further consideration of the promises and agreements herein contained, Held, on his own
4 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
5 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
6 legal action, and releases all claims that he may have against the Releasees and Downstream
7 Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands,
8 obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation,
9 investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned
10 exposures to DEHP from Products or Additional Products sold, or distributed for sale in California by
11 Spill Stop prior to the Effective Date.

12 **4.2 Mutual California Civil Code section 1542 Waiver.** Held and Spill Stop, each on
13 his/its own behalf, and on behalf of his/its agents, attorneys, representatives, successors and assigns,
14 in his individual capacity only and not in the public interest, also provides a general release which
15 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
16 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held
17 of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged
18 violations of Proposition 65 with respect to the Additional Products and the Products, as set forth in
19 the Notice or Complaint manufactured, sold or distributed by Spill Stop, or those matters released by
20 Spill Stop in Section 4.3. Held and Spill Stop each acknowledge that he/it is familiar with Section
21 1542 of the California Civil Code, which provides as follows:

22
23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
24 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
25 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
26 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
27 **THE DEBTOR.**

28 Held and Spill Stop each expressly acknowledge and waive the provisions of Section 1542 of the
California Civil Code.

1 **4.3 Spill Stop’s Release of Held**

2 Spill Stop, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
4 attorneys and other representatives, for any and all actions taken or statements made by Held and
5 his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

12 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
13 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
14 adversely affected.

15 **7. GOVERNING LAW**

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

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
27
28

1 For Spill Stop Mfg., L.L.C.:

2
3 Robert Silverstein, President
4 Spill Stop Mfg., L.L.C.
5 1509 West Le Moyne Street
6 Melrose Park, IL 60160

7 with a copy to:

8
9 Malcolm Weiss, Esq.
10 Hunton & Williams LLP
11 550 South Hope Street, Suite 2000
12 Los Angeles, CA 90071

13 For Held:

14
15 The Chanler Group
16 Attn: Proposition 65 Coordinator
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **10. POST EXECUTION ACTIVITIES**

27 Held agrees to comply with the reporting form requirements referenced in Health and Safety
28 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, Held and Spill Stop agree to mutually employ their best
efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
and supporting the motion for judicial approval.

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11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

APPROVED
By Tony Held at 12:15 pm, Aug 01, 2014

Date:

Date: _____

By: Anthony E Held
ANTHONY E. HELD, PH.D., P.E.

By: _____
Robert Silverstein, President
SPILL STOP MFG., L.L.C.

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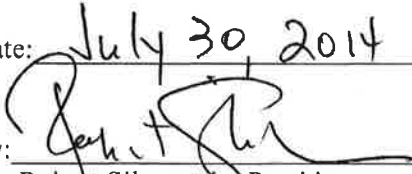
AGREED TO:

AGREED TO:

Date: _____

Date: July 30, 2014

By: _____
ANTHONY E. HELD, PH.D., P.E.

By:  _____
Robert Silverstein, President
SPILL STOP MFG., L.L.C.