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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD, PhD., P.E.,

14 Plaintiff,

15 v.

16 KRUEGER INTERNATIONAL, INC.,
17 d.b.a. KI/KRUEGER COMMERCIAL,
INC.; and DOES 1 -20, inclusive,

18 Defendants.

Case No. RG 14721395

[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.5 *et seq.*)

19 **1. INTRODUCTION**

20 **1.1 Parties**

21 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
22 P.E. (“Held”) and defendant Krueger International, Inc. (“Defendant”), with Held and Defendant
23 each referred to individually as a “Party” and collectively as the “Parties.”

24 **1.2 Held**

25 Held is a resident of the State of California who seeks to promote awareness of exposures
26 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
27 contained in consumer and commercial products.

1 **1.3 Defendant**

2 Defendant employs ten or more persons and is a person in the course of doing business
3 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
4 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

5 **1.4 General Allegations**

6 1.4.1 Held alleges that Defendant manufactured, imported, sold and/or
7 distributed for sale in California, chairs with vinyl/PVC upholstery containing Tris(1,3-dichloro-
8 2-propyl) phosphate (“TDCPP”) and Di(2-ethylhexyl)phthalate (“DEHP”) without providing the
9 clear and reasonable health hazard warnings required by Proposition 65.

10 1.4.2 Held alleges that exposure to TDCPP and DEHP occurs via ingestion from
11 hand to mouth transfer and via dermal contact with chairs with vinyl/PVC upholstery.

12 **1.5 Product Description**

13 The category of products covered by this Consent Judgment is all folding chairs with
14 foam padding or vinyl/PVC upholstery containing DEHP or TDCPP that are imported,
15 manufactured, sold, or distributed for sale by Defendant including, but not limited to, Folding
16 Chair, Model #344DV/WG/VBH (hereinafter “Products”).

17 **1.6 Notice of Violation**

18 On October 25, 2013, Held served Defendant and certain requisite public enforcement
19 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Defendant was in violation
20 of Proposition 65 for failing to warn customers, consumers, and workers in California that the
21 Products expose users to TDCPP and DEHP. To the best of the Parties’ knowledge, no public
22 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

23 **1.7 Complaint**

24 On April 9, 2014, Held filed the instant action (“Complaint”) naming Defendant as a
25 defendant, and asserting a cause of action for the alleged violations of Proposition 65 that are the
26 subject of the Notice.

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1 Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA),
2 or International Laboratory Accreditation Cooperation(ILAC) (such laboratory referred to as an
3 “Accredited Lab”) pursuant to EPA testing methodologies 3580 and 8270C, or equivalent
4 methodologies utilized by such Accredited Laboratory or federal or state agencies to determine
5 the presence, or measure the amount, of TDCPP and DEHP in a solid substance (such
6 methodologies referred to as “Approved Methodologies”).

7 **1.12 Effective Date**

8 “Effective Date” shall mean September 1, 2014.

9 **2. INJUNCTIVE RELIEF: REFORMULATION AND INTERIM WARNINGS**

10 **2.1 Reformulation**

11 Commencing on December 1, 2014, and continuing thereafter, Defendant shall only
12 purchase for sale, manufacture for sale, or distribute for sale in California Reformulated
13 Products.

14 **2.2 Warnings on Non-Reformulated Products in Inventory**

15 Commencing on the Effective Date, any Products that are not Reformulated Products that
16 are in, or en route to, Defendant’s inventory that Defendant reasonably believes may be sold or
17 distributed for sale in California, shall contain the following clear and reasonable warning:

18 “WARNING: This product contains TDCPP, a flame retardant chemical know to the State of
19 California to cause cancer; and DEHP, a phthalate chemical known to the State of California to
20 cause birth defects and other reproductive harm.” Each warning in the preceding sentence shall
21 be prominently placed with such conspicuousness as compared with other words, statements,
22 designs, or devices as to render it likely to be read and understood by an ordinary individual
23 under customary conditions before use.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay
27 the sum of \$25,000 as civil penalties. Each civil penalty payment shall be allocated in
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1 accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of
2 the funds paid to the California Office of Environmental Health Hazard Assessment
3 (“OEHHA”), and 25% of the funds paid to Held. All civil penalty payments shall be delivered to
4 the addresses provided in Section 3.4.1 below. Defendant shall be liable for payment of simple
5 interest at a rate of 10% per annum for all amounts due and owing that are not received within
6 ten (10) business days of the date they are due.

7 3.1.1 Initial Civil Penalty

8 Within ten (10) business days of the date this Consent Judgment is entered by the Court,
9 Defendant shall make an initial civil penalty of \$15,000. Defendant shall provide its payment in
10 two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$11,250;
11 and (b) “Anthony Held, Client Trust Account” in the amount of \$3,750. Defendant shall
12 deposit the full payment required under this Section to Defendant’s counsel “in trust” no later
13 than the Effective Date. Defendant’s counsel shall release and pay such funds in accordance
14 with the payment procedures set forth below in Section 3.4 within ten (10) business days after
15 the Court’s approval and entry of this Consent Judgment.

16 3.1.2 Second Civil Penalty

17 By November 1, 2014, Defendant shall make a second civil penalty of \$10,000. The
18 amount of the second penalty may be reduced according to the penalty waiver below. Defendant
19 shall provide its payment in two checks for the following amounts made payable to: (a)
20 “OEHHA” in the amount of \$7,500; and (b) “Anthony Held, Client Trust Account” in the
21 amount of \$2,500.

22 3.1.3 Reductions to Civil Penalty Payment Amounts

23 The second civil penalty amount will be waived if Defendant provides Held with
24 certification that commencing October 1, 2014 and continuing thereafter, Defendant will not sell
25 to customers for sale in California any Products that are not Reformulated Products. An officer
26 or other authorized representative shall provide Held with a written certification confirming
27 compliance with this condition no later than October 1, 2014. The option to provide a written
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1 certification in lieu of making the second civil penalty payment constitutes a material term of this
2 Consent Judgment, and with regard to such term, time is of the essence.

3 **3.2 Representations and Warranties**

4 Defendant represents that the sales data and information concerning its size, knowledge
5 of TDCPP and DEHP presence, and prior reformulation and/or warning efforts, provided to Held
6 were true and accurate based on its knowledge and are material factors upon which Held relied to
7 determine the amount of civil penalties assessed pursuant to Health and Safety Code section
8 25249.7(b). If, within nine months of the Effective Date, Held discovers and presents to
9 Defendant, evidence demonstrating that the preceding representation and warranty was
10 materially inaccurate, then Defendant shall have 30 days to meet and confer regarding Held's
11 contention. Should this 30 day period pass without any resolution between Held and Defendant,
12 Held shall be entitled to file a formal legal claim including, but not limited to, a claim for
13 damages for breach of contract; Defendant reserves all defenses respecting any such claim.

14 **3.3 Reimbursement of Fees and Costs**

15 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
17 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly
18 after the other settlement terms had been finalized, Defendant expressed a desire to resolve the
19 fee and cost issue. The Parties then attempted to (and did) reach an accord on the compensation
20 due to Held and his counsel under general contract principles and the private attorney general
21 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
22 through the mutual execution of this Consent Judgment. Specifically, Defendant shall pay a
23 cumulative total of \$60,000 for the fees and costs incurred by Held investigating, bringing this
24 matter to Defendant's attention, preparing and filing a complaint, engaging in discovery, and
25 negotiating a settlement in the public interest. Defendant shall deposit the full payment required
26 under this Section to Defendant's counsel "in trust" no later than the Effective Date.
27 Defendant's counsel shall release and pay such funds in accordance with the payment procedures
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1 set forth below in Section 3.4 within ten (10) business days after the Court’s approval and entry
2 of this Consent Judgment.

3 **3.4 Payment Procedures**

4 **3.4.1 Payment Addresses**

5 (a) All payments and tax documentation for Held and his counsel shall
6 be delivered to:

7 Moscone Emblide Sater & Otis LLP
8 Attn: Proposition 65 Controller
9 220 Montgomery Street, Suite 2100
10 San Francisco, CA 94104

11 (b) All payments owed to OEHHA shall be delivered directly to
12 OEHHA (Memo line “Prop 65 Penalties”) at one of the following addresses, as
13 appropriate, with a copy of the checks payable to OEHHA mailed to the payment address
14 provided in Section 3.4.1(a), as proof of payment to OEHHA:

15 For United States Postal Service Delivery:

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

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

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

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Held’s Release of Proposition 65 Claims**

Held, acting on his own behalf and in the public interest, releases Defendant, its parents,
subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
attorneys, and each entity to whom Defendant directly or indirectly distributes or sells the
Products, including, but not limited, to downstream distributors, wholesalers, customers,

1 retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), from all
2 claims alleging violations of Proposition 65 through the Effective Date based on unwarned
3 exposures to TDCPP and DEHP in the Products, as set forth in the Notice. Compliance with the
4 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
5 exposures to TDCPP and DEHP from the Products, as set forth in the Notice.

6 4.2 Held’s Individual Releases of Claims

7 Held, in his individual capacity only and *not* in his representative capacity, provides a
8 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
9 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
10 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected
11 or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and DEHP in
12 Products sold or distributed for sale by Defendant prior to the Effective Date.

13 4.3 Defendant’s Release of Held

14 Defendant, on its own behalf, and on behalf of its past and current agents, representatives,
15 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
16 attorneys and other representatives for any and all actions taken or statements made (or those that
17 could have been taken or made) by Held and his attorneys and other representatives, whether in
18 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this
19 matter, or with respect to the Products.

20 5. COURT APPROVAL

21 This Consent Judgment is not effective until it is approved in its entirety and entered by
22 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
23 within one year after it has been fully executed by all Parties. Held and Defendant agree to
24 support the entry of this agreement as a Consent Judgment and to obtain approval of the Consent
25 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
26 Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of
27 this Consent Judgment, which motion Held shall draft and file and Defendant shall support,
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1 appearing at the hearing if so requested. If any third-party objection to the motion is filed, Held
2 and Defendant agree to work together to file a reply and appear at any hearing. This provision is
3 a material component of the Consent Judgment and shall be treated as such in the event of a
4 breach.

5 If the Court does not approve the Consent Judgment, the Parties shall meet and confer as
6 to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
7 course of action to take, then the case shall proceed in its normal course on the Court's trial
8 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
9 meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do
10 not jointly agree on a course of action to take, then the case shall proceed in its normal course on
11 the Court's trial calendar. In the event that this Consent Judgment is entered by the Court and
12 subsequently overturned by any appellate court or not approved by the Court, any monies that
13 have been provided to OEHHA, Held or his counsel pursuant to Section 3, above, shall be
14 refunded within 15 days of the appellate decision becoming final.

15 **6. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
18 inapplicable by reason of law generally, or as to the Products, then Defendant may provide Held
19 with notice of any asserted change in the law, and shall have no further obligations pursuant to
20 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 Defendant from its obligation to
22 comply with any pertinent state or federal toxic control laws.

23 **7. NOTICE**

24 Unless specified herein, all correspondence and notices required to be provided by this
25 Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered
26 or certified mail, return receipt requested; or (iii) a recognized overnight courier to the following
27 addresses:
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1 To Defendant:
2 Attn: Arthur Casey
3 Joshua J. Borger
4 Robinson & Wood, Inc.
5 227 North First Street
6 San Jose, CA 95113

To Held:
Moscone Emblide Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

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

9 **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

13 **9. COMPLIANCE WITH REPORTING REQUIREMENTS**

14 Held and his counsel agree to comply with the reporting form requirements referenced in
15 California Health and Safety Code section 25249.7(f).

16 **10. MODIFICATION**

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

20 **11. SEVERABILITY**

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

24 **12. AUTHORIZATION**

25 The undersigned are authorized to execute this Consent Judgment on behalf of their
26 respective Parties and have read, understood, and agree to all of the terms and conditions
27 contained herein.
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AGREED TO:

PLAINTIFF ANTHONY HELD

Anthony E. Held

Anthony Held, PhD., P.E.

Dated: 07/31/2014

AGREED TO:

DEFENDANT KRUEGER
INTERNATIONAL, INC.

By: Tim VanSewer

Name: Tim Van Seweren

Title: Corporate Risk Manager

Dated: 8/4/14