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5

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
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12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 AMERICAN CONSOLIDATED
MANUFACTURING CO., INC.; *et al.*,

16 Defendants.
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Case No. CIV-1404365

[PROPOSED] CONSENT JUDGMENT

Action Filed: November 18, 2014

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This [Proposed] Consent Judgment (“Consent Judgment”) is entered into by and between
4 plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and defendant American Consolidated
5 Manufacturing Co., Inc. (“American Consolidated”) with Dr. Held and American Consolidated
6 collectively referred to as the “Parties” and individually as a “Party.”

7 **1.2 Anthony E. Held, Ph.D., P.E.**

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

11 **1.3 American Consolidated Manufacturing Co., Inc. and Benzophenone**

12 American Consolidated manufactures, and/or distributes, and/or sells UV nail gels
13 containing benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe
14 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et*
15 *seq.* (commonly known as “Proposition 65”) as a chemical “known to the state to cause cancer” as
16 Proposition 65 defines that phrase. 27 Cal. Code Reg. § 25000.

17 **1.4 Products Covered**

18 This Consent Judgment covers and applies to all UV nail gels containing benzophenone
19 including, but not limited to, *NSI Balance UV Gel System Color Gels, Red Carpet, #122*, that are
20 manufactured and/or distributed for sale in California and/or sold in California by American
21 Consolidated (“Covered Products”).

22 **1.5 General Allegations**

23 Dr. Held alleges in the Complaint that American Consolidated manufactured, and/or
24 distributed for sale in California, and/or sold in California, Covered Products containing
25 benzophenone without “a clear and reasonable warning” as Proposition 65 defines that phrase. Dr.
26 Held asserts this settlement is necessary to assure compliance with Proposition 65 now and in the
27 future and to settle Dr. Held’s alleged claims.

1 **1.6 Notice of Violation**

2 On August 28, 2014, Dr. Held served American Consolidated and the requisite public
3 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that American
4 Consolidated was in violation of Proposition 65 for failing to warn consumers in California that its
5 UV nail gels exposed users to benzophenone. To the best of the Parties’ knowledge, no public
6 enforcer has commenced and is diligently prosecuting the allegations set forth in any of the Notice.

7 **1.7 Complaint**

8 On November 18, 2014, Dr. Held filed a complaint in the Superior Court in and for the
9 County of Marin against American Consolidated and DOES 1-150, alleging violations of California
10 Health & Safety Code § 25249.6, based on exposures to benzophenone contained in certain UV nail
11 gels sold by American Consolidated in the State of California, *Held v. American Consolidated*
12 *Manufacturing Co., Inc., et al.*, Case No. CIV1404365 (the “Complaint”).

13 **1.8 No Admission**

14 American Consolidated denies all the respective material, factual, and legal allegations
15 contained in the Notice and Complaint. American Consolidated maintains that all of its Covered
16 Products have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
17 construed as an admission against interest by American Consolidated of any fact, finding,
18 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
19 constitute or be construed as an admission against interest by American Consolidated of any fact,
20 finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or
21 otherwise affect American Consolidated’s obligations, responsibilities, and duties under this
22 Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over American Consolidated as to the allegations in the Complaint, that venue is proper
26 in the County of Marin, American Consolidated agrees that it employs or has employed ten or more
27 persons during time periods relevant to the Complaint and that this Court has jurisdiction over the
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1 Parties to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and
2 Code of Civil Procedure § 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
5 this Consent Judgment is approved and entered by the Court, including any unopposed tentative
6 ruling.

7 **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD**

8 **2.1 Reformulation Standard**

9 As of the Effective Date, American Consolidated shall only distribute/manufacture or sell
10 Covered Products that contain no more than 35 ppm benzophenone pursuant to a scientifically
11 appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A,
12 8270C, or any other scientifically appropriate methodology for determining the benzophenone
13 content in the Covered Product (“Reformulation Standard”). American Consolidated represents that
14 at the time of the execution of this Agreement and as a result of receiving Dr. Held’s notices, it has
15 ceased manufacturing, importing, distributing, selling and/or offering for sale in the state of
16 California, all Covered Products containing benzophenone, and will only manufacture, import,
17 distribute, sell and/or offer for sale all Covered Products in the state of California if they meet the
18 Reformulation Standard.

19 **2.2 Compliance with Reformulation Standard**

20 American Consolidated shall meet the Reformulation Standard by testing the Covered
21 Product pursuant to a scientifically appropriate application of U.S. Environmental Protection
22 Agency testing methodologies 3580A, 8270C, or any other scientifically appropriate methodology
23 for determining the benzophenone content in the Covered Product.

24 **3. MONETARY PAYMENTS**

25 **3.1 Civil Penalty**

26 Pursuant to Health and Safety Code section 25249.7(b), American Consolidated shall pay
27 civil penalties in the amount of \$1,500. The penalty payment shall be allocated according to Health
28 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the

1 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%
2 of the penalty paid to Dr. Held. Dr. Held’s counsel shall be responsible for remitting American
3 Consolidated’s penalty payment under this Settlement Agreement to OEHHA. Within two (2)
4 business days of the Effective Date American Consolidated shall issue a check payable to “The
5 Chanler Group, Anthony E. Held Client Trust Account” in the amount of \$1,500.

6 **3.2 Reimbursement of Fees and Costs**

7 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
9 to be resolved after the material terms of the agreement had been settled. Shortly after the other
10 settlement terms had been finalized, American Consolidated expressed a desire to resolve Dr.
11 Held’s fees and costs. American Consolidated agrees to pay Dr. Held and his counsel under the
12 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for
13 all work performed through the mutual execution of this agreement, including without limitation the
14 fees and costs incurred as a result of investigating, bringing this matter to American Consolidated’s
15 attention, negotiating a settlement, and seeking court approval of the same. American Consolidated
16 agrees to pay \$10,000 in fees and costs within two (2) business days of the Effective Date in the
17 form of a check made payable to “The Chanler Group.”

18 **3.3 Payment Procedures**

19 All payments under this Consent Judgment shall be delivered to:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Dr. Held’s Public Release of Proposition 65 Claims**

27 This Consent Judgment is a full, final and binding resolution of all claims that were or could
28 have been asserted in the Complaint arising out of American Consolidated’s alleged failure to
provide Proposition 65 warnings for exposures to benzophenone in the Covered Products. Dr. Held,
acting on his own behalf and in the public interest, releases American Consolidated and its

1 respective parents, subsidiaries, affiliated entities under (full or partial) common ownership,
2 manufacturers, suppliers and the directors, officers, employees, attorneys, and predecessors,
3 successors or assigns of each of them (“Releasees”) and each entity to whom American
4 Consolidated directly or indirectly distributes or sells the Covered Products including, but not
5 limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
6 members, licensors and licensees, and including any and all subsidiaries, parents, marketplace
7 retailers and/or affiliates of the foregoing retailers (collectively, the “Distribution Chain
8 Releasees”) for violations arising under Proposition 65 for unwarned exposures to benzophenone
9 from the Covered Products by American Consolidated prior to the Effective Date. Dr. Held’s
10 release of claims applies to all Covered Products which American Consolidated (or its
11 manufacturer) either manufactured, and/or distributed and/or sold prior to the Effective Date,
12 regardless of the date any person distributes or sells the subject Covered Products.

13 Upon entry of this Consent Judgment by the Court, going forward, American Consolidated’s
14 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with
15 Proposition 65 with respect to benzophenone in the Covered Products.

16 **4.2 Dr. Held’s Individual Release of Claims**

17 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
18 a release to American Consolidated, Releasees, and Distribution Chain Releasees, which release
19 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
20 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr.
21 Held of any nature, character or kind, whether known or unknown, suspected or unsuspected,
22 arising out of alleged or actual exposures to benzophenone in the Covered Products prior to the
23 Effective Date.

24 **4.3 American Consolidated’s Release of Dr. Held**

25 American Consolidated, on behalf of itself, its past and current agents, representatives,
26 attorneys, successors and assignees, hereby waives any and all claims against Dr. Held and his
27 attorneys and other representatives, for any and all actions taken or statements made by Dr. Held
28 and his attorneys and other representatives, whether in the course of investigating claims, otherwise

1 seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products
2 up through the Effective Date.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
7 writing.

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 provisions
11 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 California
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
15 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
16 limitation the delisting of benzophenone, then American Consolidated may provide written notice to
17 Dr. Held of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above,
18 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
19 that, the Covered Products are so affected. None of the terms of this Consent Judgment shall have
20 any application to Covered Products sold outside of the State of California.

21 **8. NOTICE**

22 Unless specified herein, all correspondence and notice required to be provided pursuant to
23 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class registered
24 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other at the
25 following addresses:
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To American Consolidated:
Fred Slack, President
American Consolidated
Manufacturing Co., Inc.
2 Union Hill Road, Building 2
West Consohocken, PA 19428

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

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.

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)

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f), Dr. Held is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment which American Consolidated shall support and join. If any third party objection to the noticed motion is filed, Dr. Held and American Consolidated agree to work together to the extent appropriate, and shall appear at any hearing before the Court to urge the Court to approve this Consent Judgment.

12. MODIFICATION

This Consent Judgment may only be modified by a written instrument executed by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion to modify shall be served on all Parties and the Office of the Attorney General.

1 **13. AUTHORIZATION**

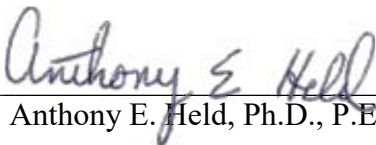
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

AGREED TO:

7 Date: 7/27/2016

Date: _____

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

By: _____
Fred Slack, President
American Consolidated Manufacturing
Co., Inc.

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13. 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: 6-28-16

By: _____

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

By:  _____

Fred Slack, President
American Consolidated Manufacturing
Co., Inc.