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6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION
11

12 IN RE PROPOSITION 65 CONSOLIDATED)
BENZOPHENONE CASES)

13 ANTHONY E. HELD, PH.D., P.E.,)
14)

15 Plaintiff,)

16 v.)

17 LEVLAD, LLC; *et al.*,)

18 Defendants.)
_____)
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LEAD CASE NO. CIV 1402798

**[PROPOSED] CONSENT JUDGMENT AS
TO CCA INDUSTRIES, INC.**

Action Filed: July 21, 2014

1. **INTRODUCTION**

1.1 **Parties**

This consent judgment (“Consent Judgment”) is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and CCA Industries, Inc. (“CCA”) with Dr. Held and CCA collectively referred to as the “Parties” and individually as a “Party.”

1.2 **Plaintiff**

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

1.3 **CCA Industries, Inc. and Benzophenone**

CCA manufactures, and/or distributes, and/or sells sunscreen products. One ingredient used in such products to enhance their ability to provide protection from the sun is octocrylene, an active ingredient approved for use in sunscreens by the Federal Food & Drug Administration (“FDA”).¹ Octocrylene can at times contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as “Proposition 65”) as a chemical “known to the state to cause cancer” as Proposition 65 defines that phrase. 27 Cal. Code Reg. § 25000.

1.4 **Products Covered**

This Consent Judgment covers and applies to all benzophenone-containing sunscreen manufactured, distributed for sale in California and/or sold in California by CCA. All sizes, types, brands, packaging, formulations, delivery forms (e.g., sprays or lotions applied by hand), intended uses (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic purposes) are included, such as the *Solar Sense Clear Zinc Sunscreen Sport Body Stick Broad Spectrum SPF 50, #17774, UPC #0 18515 17774 2* (“Covered Products”). This Consent Judgment, and all of its terms, applies to all Covered Products, including without limitation new products and brands introduced, developed, or acquired in the future by CCA which would today meet the definition of Covered

¹ See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 Products if they currently were being manufactured or distributed for sale, or being sold, in
2 California. The term Covered Product, as used hereafter in this Consent Judgment, includes such
3 future products and brands.

4 **1.5 General Allegations**

5 Dr. Held alleges in the Complaint that CCA manufactured, and/or distributed for sale in
6 California, and/or sold in California, Covered Products containing benzophenone without “a clear
7 and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr. Held
8 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future
9 and to settle Dr. Held’s alleged claims.

10 **1.6 Notice of Violation**

11 On August 28, 2014, Dr. Held served CCA and the requisite public enforcement agencies
12 with a 60-Day Notice of Violation (“Notice”), alleging that CCA was in violation of Proposition 65
13 for failing to warn consumers in California that its Sunscreens exposed users to benzophenone. To
14 the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting
15 the allegations set forth in the Notice.

16 **1.7 Complaint**

17 On February 3, 2015, Dr. Held filed a complaint in the Superior Court in and for the County
18 of Marin against CCA Industries, Inc. and DOES 1-150, alleging violations of California Health &
19 Safety Code § 25249.6, based on exposures to benzophenone contained in certain sunscreens sold
20 by CCA in the State of California, *Held v. CCA Industries, Inc.*, Case No. CIV1500403 (the
21 “Complaint”). This matter has been consolidated into the *Held v. Levlad, LLC, et al.*, Case No. CIV
22 1402798.

23 **1.8 No Admission**

24 CCA denies all the respective material, factual, and legal allegations contained in the Notice
25 and Complaint. CCA maintains that all of its Covered Products have been and are in compliance
26 with all laws. Nothing in this Consent Judgment shall be construed as an admission against interest
27 by CCA of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
28 this Consent Judgment constitute or be construed as an admission against interest by CCA of any

fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect CCA's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that this Consent Judgment is approved, including any unopposed Tentative Ruling.

2. INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION

2.1 Reformulation Standard

(a) Whereas, CCA, based on inquiry for purposes of this Consent Judgment, has not identified any ingredient in its Covered Products other than octocrylene that is a source of detectable benzophenone in such Covered Products. Further, based upon inquiry for purposes of this Consent Judgment, CCA represents that it has investigated and concluded that there are only a few major suppliers of octocrylene for the domestic market and that time and phasing is needed for the marketplace of octocrylene suppliers to make the adjustments necessary to deliver octocrylene with benzophenone meeting the Octocrylene Reformulation Standards.

(b) As of June 1, 2018, CCA shall only manufacture, or cause to be manufactured, either Covered Products containing no more than (i) 50 parts per million ("ppm") benzophenone in the finished Covered Products; or (ii) 500 ppm of benzophenone in the ingredient octocrylene used in the finished Covered Products. These first standards are interim standards.

(c) As of June 1, 2020, CCA shall only manufacture or cause to be manufactured, either Covered Products containing no more than (i) 35 ppm benzophenone in the finished Covered

Product; or (ii) 350 ppm of benzophenone in the ingredient octocrylene used in the finished Covered Products. These second standards are the “Final Reformulation Standards.”

(d) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) and (c) shall be referred to collectively as the “Reformulation Standards,” consisting of either the Sections 2.1 (b)(i) and (c)(i) (the “Finished Product Reformulation Standards”) or Sections 2.1 (b)(ii) and (c)(ii) (the “Octocrylene Reformulation Standards”). CCA may at any time, at its own election, comply with either, both, or any combination of the applicable Finished Product Reformulation Standard or the Octocrylene Reformulation Standard with respect to any Covered Product.

(e) The Reformulation Standards shall apply to Covered Products which are manufactured by or on behalf of CCA on or after the applicable Reformulation Standard dates.

2.2. Notification

CCA shall provide, no later than May 30, 2017, written notice (the “Octocrylene Supplier Letter”) to its current respective octocrylene supplier or suppliers, informing said supplier or suppliers of the Octocrylene Reformulation Standard and urging each supplier to use reasonable efforts to provide expeditiously only octocrylene which complies with the Octocrylene Reformulation Standard. CCA shall not include statements in the Octocrylene Supplier Letter that will encourage a supplier to delay compliance with the Octocrylene Reformulation Standard.

2.3 Compliance with Reformulation Standard

(a) In the event that CCA elects to meet the Finished Product Reformulation Standard it may, at its option, either (i) test the Covered Product pursuant to a scientifically appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically appropriate methodology for determining the benzophenone content in a substance of the form of the specific Covered Product being tested, or (ii) may use the appropriate mathematical calculation based on octocrylene percentage in the Covered Product and the benzophenone concentration in the lot of octocrylene used in the finished Covered Product, based either on testing of the octocrylene lot or on a certificate of analysis documenting benzophenone content from the octocrylene supplier (the “Certificate of Analysis”) at the option of CCA.

1 (b) In the event that CCA elects to meet the Octocrylene Reformulation Standard, it
2 shall obtain a Certificate of Analysis or analytical testing report for each lot of octocrylene used in
3 the manufacture of Covered Products. If, after CCA has advised its octocrylene suppliers to include
4 a Certificate of Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to
5 include a Certificate of Analysis, CCA shall correct the lapse upon discovery.

6 (c) CCA may, absent grounds to question the accuracy, demonstrate compliance with
7 either Reformulation Standard by relying in good faith on an octocrylene supplier's Certificate of
8 Analysis or comparable verified quantitative benzophenone content information. Such good faith
9 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene
10 suppliers shall rely on any scientifically appropriate testing methodology for determining the
11 benzophenone content of octocrylene.

12 (d) CCA shall retain compliance documentation for three years after delivery of a lot of
13 octocrylene and compliance documentation shall be made available within 30 days of a written
14 request by Dr. Held, who may make no more than two such requests annually.

15 **3. MONETARY PAYMENTS**

16 **3.1 Civil Penalty**

17 Pursuant to Health and Safety Code section 25249.7(b), CCA has been assessed civil
18 penalties in the amount of \$30,000. The penalty payments shall be allocated according to Health
19 and Safety Code sections 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the
20 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25%
21 of the penalty paid to Dr. Held. Dr. Held's counsel shall be responsible for remitting CCA's
22 penalty payment(s) under this Settlement Agreement to OEHHA. Each penalty payment shall be
23 made to "The Chanler Group, Anthony E. Held Client Trust Account" and remitted to the address
24 indicated in Section 3.3 below.

25 **3.1.1 Initial Civil Penalty.** On April 3, 2017, CCA shall issue a check payable to
26 its counsel's law firm in the amount of \$10,000, to be held in trust by its counsel. Counsel for CCA
27 shall provide The Chanler Group with written confirmation within three days of receipt that the
28 funds have been deposited into a trust account. Within two business days of the Effective Date,

1 counsel shall issue a check to “Anthony E. Held, Client Trust Account” in the amount of the initial
2 civil penalty. Dr. Held’s counsel shall be responsible for remitting CCA’s penalty payment under
3 this Consent Judgment to OEHHA.

4 **3.1.2 Final Civil Penalty.** On or before June 30, 2018, CCA shall pay a final civil
5 penalty (the “**Final Civil Penalty**”) in the amount of \$20,000. However, the Final Civil Penalty
6 shall be waived in its entirety if CCA certifies that all Covered Products subject to this Consent
7 Judgment manufactured by or on behalf of CCA on or after June 1, 2018, meet a Final
8 Reformulation Standard. A responsible official with personal knowledge, after due inquiry, of CCA
9 that has exercised this election shall provide Dr. Held with a written certification confirming
10 compliance with the above conditions on or before June 15, 2018.

11 **3.1.3 Octocrylene Supplier Letter Content.** If CCA does not include a statement
12 in its Octocrylene Supplier Letter requesting that its supplier use commercially reasonable efforts to
13 achieve an Octocrylene Reformulation Standard of 200 ppm by June 1, 2020, it shall owe an
14 additional \$10,000 in civil penalties, due within five (5) business days of the Effective Date, to be
15 allocated and paid as set forth in Section 3.1 of this Consent Judgment. CCA shall remit a copy of
16 its Octocrylene Supplier Letter to Dr. Held no later than June 15, 2017, to the address provided in
17 Section 3.3 below, in order for Dr. Held to ascertain whether or not the \$10,000 penalty shall be
18 waived.

19 **3.2 Reimbursement of Fees and Costs**

20 The Parties acknowledge that Dr. 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 the issue
22 to be resolved after the material terms of the agreement had been settled. Shortly after the other
23 settlement terms had been finalized, CCA expressed a desire to resolve Dr. Held’s fees and costs.
24 CCA agrees to pay Dr. Held and his counsel under the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5, for all work performed through the mutual
26 execution of this agreement, including without limitation the fees and costs incurred as a result of
27 investigating, bringing this matter to CCA’s attention, negotiating a settlement, and seeking court
28 approval of the same. Within five business days of executing this Consent Judgment, CCA shall

1 issue a check payable to its counsel's law firm in the amount of \$40,000, to be held in trust by its
2 counsel. Counsel for CCA shall provide The Chanler Group with written confirmation within five
3 days of receipt that the funds have been deposited in a trust account. Within two business days of
4 the Effective Date, counsel shall issue a check to "The Chanler Group" in the amount of the
5 attorneys' fees and costs in the amount of \$40,000, and shall deliver it to the address listed in
6 Section 3.3 below.

7 **3.3 Payment Procedures**

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

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

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

14 This Consent Judgment is a full, final and binding resolution of all claims that were or could
15 have been asserted in the Complaint arising out of CCA's alleged failure to provide Proposition 65
16 warnings for exposures to benzophenone in its Covered Products. Dr. Held, acting on his own
17 behalf and in the public interest, releases CCA and its respective parents, subsidiaries, affiliated
18 entities under (full or partial) common ownership, manufacturers, suppliers and the directors,
19 officers, employees, attorneys, and predecessors, successors or assigns of each of them
20 ("Releasees") and each entity to whom CCA directly or indirectly distributes or sells the Covered
21 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
22 franchisers, cooperative members, licensors and licensees, and including any and all subsidiaries,
23 parents, marketplace retailers and/or affiliates of the foregoing retailers (collectively, the
24 "Distribution Chain Releasees") for violations arising under Proposition 65 for unwarned exposures
25 to benzophenone from the Covered Products by CCA prior to the Effective Date. Dr. Held's release
26 of claims applies to all Covered Products which CCA (or its manufacturers) either manufactured,
27 and/or distributed and/or sold prior to the Effective Date, regardless of the date any person
28 distributes or sells the subject Covered Products.

1 Upon entry of this Consent Judgment by the Court, going forward, CCA’s compliance with
2 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
3 with respect to benzophenone in CCA’s prior, current and future Covered Products.

4 **4.2 Dr. Held’s Individual Release of Claims**

5 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
6 a release to CCA, Releasees, and Distribution Chain Releasees, which release shall be effective as a
7 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
8 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr. Held of any
9 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
10 alleged or actual exposures to benzophenone in CCA’s Covered Products prior to the Effective
11 Date.

12 **4.3 CCA Industries, Inc.’s Release of Dr. Held**

13 CCA, on behalf of itself, its past and current agents, representatives, attorneys, successors
14 and assignees, hereby waives any and all claims against Dr. Held and his attorneys and other
15 representatives, for any and all actions taken or statements made by Dr. Held and his attorneys and
16 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
17 Proposition 65 against it in this matter, or with respect to the Covered Products up through the
18 Effective Date.

19 **4.4 Release and Dismissal of Retailer Defendants**

20 This Consent Judgment provides a “downstream” release which resolves all claims in the
21 Complaint for all Covered Products manufactured by, or on behalf of, distributed, or sold by CCA.
22 Any retailer who has been named in one or more Complaint (a “Retailer Defendant”) due to its sale
23 of one or more such Covered Products shall be dismissed without prejudice unless, prior to the
24 Effective Date that Retailer Defendant had also received a Notice that identified an exemplar
25 product not manufactured or supplied by either CCA or an entity that has previously resolved Dr.
26 Held’s claims with a downstream release.

1 **5. FORCE MAJEURE**

2 In the event that it is not feasible for CCA to obtain conforming octocrylene necessary so as
3 to comply with any Reformulation Standard due to an Act of God (including fire, flood, earthquake,
4 storm, hurricane or other natural disaster) or loss of adequate supplier ability to supply octocrylene
5 on an uninterrupted basis compliant with the applicable Octocrylene Reformulation Standard, the
6 provisions of this paragraph will dictate whether the applicable dates for meeting the Reformulation
7 Standards for CCA shall be extended. The criteria for determining whether it is feasible to obtain
8 conforming octocrylene shall include the following factors: availability and reliability of supply
9 that meets the applicable Octocrylene Reformulation Standard, cost of such conforming octocrylene
10 and resulting increase in manufacturers' prices resulting from the use of conforming octocrylene,
11 performance characteristics of conforming octocrylene and of the resulting Covered Products,
12 including but not limited to formulation, performance, safety, efficacy, consumer acceptance, and
13 stability.

14 CCA shall provide written notice to Dr. Held and included in the notice shall be the specific
15 reason or reasons for invoking the Force Majeure clause, along with a reasonable estimate of the
16 time period during which CCA will be unable to comply with the applicable Reformulation
17 Standard. During the time invoked by CCA, the Reformulation Standard shall be revised to 100
18 ppm for the Finished Product Reformulation Standard and 1,000 ppm for the Octocrylene
19 Reformulation Standard.

20 If the Parties disagree as to whether CCA has a valid reason to invoke the Force Majeure
21 clause or disagree as to the length of time necessary for CCA to comply with the Reformulation
22 Standard, they shall attempt to resolve their differences through one or more sessions with a
23 mediator as mutually agreed to by the Parties or, if necessary, as referred by the Court. Dr. Held's
24 reasonable fees and costs of the mediation sessions under this Section shall be borne solely CCA
25 unless otherwise allocated by the mediator, who shall consider whether mediation was necessary
26 and/or whether a Party asserted unreasonable or extreme positions. If the Parties cannot reach
27 resolution via a meet and confer or the mediator process, an aggrieved Party may move the Court
28

1 via a noticed motion on all Parties, with a copy to the Office of the Attorney General, for such
2 additional relief as that Party deems necessary.

3 **6. 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 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
10 Judgment is held by a court to be void or unenforceable, or any Parties agree to modify any terms
11 due to input from the Office of the Attorney General or after a hearing before the Court in
12 connection with Dr. Held's Motion to Approve, or for other good cause, each Party to be bound by
13 any such modified terms must re-execute the modified Consent Judgment and such modified
14 Consent Judgment then shall be presented to the Court for approval by Dr. Held; provided,
15 however, that if a provision of this Consent Judgment declared void or unenforceable is material to
16 the Party for whom such term provided a benefit or protection, that Party can seek other remedies,
17 including, without limitation, rescission or reformation, based on the provision being declared void
18 or unenforceable.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
22 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
23 limitation the delisting of benzophenone, then CCA may provide written notice to Dr. Held of any
24 asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further
25 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered
26 Products are so affected. None of the terms of this Consent Judgment shall have any application to
27 Covered Products sold outside of the State of California.
28

1 **9. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR BENZOPHENONE**

2 If FDA adopts new regulations or Congress enacts new laws governing octocrylene and/or
3 benzophenone content in any Covered Products, then the Parties shall meet and confer regarding the
4 effect of such changes in the law on the obligations of this Consent Judgment. If necessary to reach
5 agreement, the Parties may refer any specific issue for consideration by a mediator agreed to by the
6 Parties or, if necessary, as appointed by the Court. Notwithstanding the foregoing, if FDA
7 authorizes the percentage of octocrylene to increase above the current limit of 10% in Covered
8 Products, then this Consent Judgment shall by operation of law be amended to allow benzophenone
9 in finished Covered Products to rise in proportion to the percentage increase. CCA shall notify Dr.
10 Held of the date this Section operates to change any Finished Product Reformulation Standard.
11 This notice obligation shall sunset on June 1, 2023. Even if FDA changes the level of permissible
12 octocrylene prior to June 1, 2018, the civil penalty provisions of Section 3.1.2 shall apply as written,
13 not to any standards as modified by this Section 9. CCA represents they are not aware that the FDA
14 currently has published or made public plans to raise the allowable levels of octocrylene in the
15 Covered Products.

16 **10. NOTICE**

17 Unless specified herein, all correspondence and notice required to be provided pursuant to
18 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class registered
19 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other at the
20 following addresses:

21 To CCA:

22 Daniel J. Herling, Esq.
23 Mintz Levin
24 44 Montgomery Street, 36th floor
 San Francisco, CA 94104

 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

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

1 **11. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

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

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

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

14 **14. MODIFICATION**

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

18 **15. ENFORCEMENT**

19 **15.1 Potential Violation by CCA Industries, Inc.**

20 In order to assert a potential violation of the Consent Judgment, Dr. Held shall provide
21 notice to CCA as set forth in this paragraph (“Notice of Breach”): (a) Dr. Held shall provide all
22 results of testing conducted on a specific Covered Product during the three month period for which
23 the violation is alleged; (b) such testing must be of no less than five (5) of the same Covered
24 Product (irrespective of the volume size of the container) collected within the three (3) month
25 period, from five different retail vendors; (c) the average of all test results for that period exceed the
26 finished Product Reformulation Standard; and (d) Dr. Held shall provide the alleged violator a copy
27 of (i) the purchase information for the allegedly violating Covered Product and (ii) a digital image
28

1 of the allegedly violating Covered Product showing the SKU/UPC and, if present on the container,
2 the Lot/Batch number(s).

3 CCA and Dr. Held shall, within thirty days of receipt of the Notice of Breach, meet and
4 confer regarding the alleged violation, during which time Dr. Held shall not file any motion,
5 application, action, or pleading regarding the alleged violation.

6 For the first alleged violation as to any specific Covered Product for which Dr. Held
7 provides Notice of Breach, CCA may demonstrate compliance by providing (1) a Certificate of
8 Analysis or comparable verified quantitative benzophenone content information for five (5) units of
9 the Covered Product or for the lot(s) of octocrylene from the supplier(s) of the octocrylene in the
10 Covered Product at issue showing levels of benzophenone meeting the Octocrylene Reformulation
11 Standard, or (2) a prior test result, using scientifically appropriate test methodologies, of the lot(s)
12 of octocrylene used in the finished product which is the subject of the Notice of Breach, showing
13 levels of benzophenone meeting the Octocrylene Reformulation Standard. If CCA cannot
14 demonstrate compliance, it must pay a stipulated civil penalty of \$25,000.00 to be allocated
15 according to Section 3.1.

16 In the event that, thereafter, Dr. Held provides a Notice of Breach pertaining to a second
17 alleged violation for the same Covered Product, he must do so in accordance with this section. For
18 the second alleged violation noticed by Dr. Held of the same Covered Product, CCA may
19 demonstrate compliance with the terms of the Consent Judgment by providing test results, using
20 scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or
21 on the first three (3) lots of octocrylene received more than 30 days after receipt of the written
22 response showing compliance with the Octocrylene Reformulation Standard received from the
23 supplier of the octocrylene used to make the finished product which was the subject of the first
24 Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots are
25 received during the relevant time period, testing is required only for such lots as were received.
26 Such a showing shall constitute compliance.

27 In the event that CCA cannot demonstrate compliance in the manner set forth above after
28 receipt of a second Notice of Breach for the same Covered Product, and Dr. Held thereafter

1 provides notice in accordance with the provisions in this Section of a third alleged violation for the
2 same Covered Product, CCA shall pay a stipulated penalty of \$50,000.00 for each such second or
3 subsequent violation.

4 **15.2 Retailer Defendants**

5 If Dr. Held sends a Notice of Breach to a Retailer Defendant, that Retailer Defendant shall
6 be allowed to tender such notice to CCA. Thereafter, Dr. Held shall proceed with CCA in
7 accordance with Section 15.1 in lieu of the Retailer Defendant.

8 **16. AUTHORIZATION**

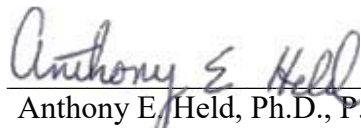
9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood and agree to all of the terms and conditions of this
11 Consent Judgment.

12
13 AGREED TO:

AGREED TO:

14 Date: 3/29/2017

Date: _____

15
16 By: 
17 Anthony E. Held, Ph.D., P.E.

By: _____
Richard Kornhouser, President
CCA Industries, Inc.

1 provides notice in accordance with the provisions in this Section of a third alleged violation for the
2 same Covered Product, CCA shall pay a stipulated penalty of \$50,000.00 for each such second or
3 subsequent violation.

4 **15.2 Retailer Defendants**

5 If Dr. Held sends a Notice of Breach to a Retailer Defendant, that Retailer Defendant shall
6 be allowed to tender such notice to CCA. Thereafter, Dr. Held shall proceed with CCA in
7 accordance with Section 15.1 in lieu of the Retailer Defendant.

8 **16. AUTHORIZATION**

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

12
13 AGREED TO:

AGREED TO:

14 Date: _____

14 Date: 4/6/2017

15
16 By: _____

16 By: 

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

17 Douglas Haas, President and COO
18 CCA Industries, Inc.