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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

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

14 Plaintiff,

15 v.

16 PHILIPS HOLDING USA INC.; PHILIPS
17 ELECTRONICS NORTH AMERICA
CORPORATION; *et al.*

18 Defendants.
19

Case No. CV1503344

[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 Philips Holding USA Inc. and Philips Electronics North America Corporation
5 (collectively, "Philips"), with Held and Philips each individually referred to as a "Party" and
6 collectively as the "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Philips**

12 Philips employs ten or more individuals and is a "person in the course of doing business" for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
14 § 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Held alleges that Philips imports, sells, or distributes for sale in California, headphones with
17 vinyl/PVC earhooks or other components that contain di(2-ethylhexyl)phthalate ("DEHP") without
18 first providing the exposure warning that Held alleges is required by Proposition 65. DEHP is listed
19 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are headphones with vinyl/PVC earhooks or
22 other components containing DEHP that are imported, sold, or distributed for sale in California by
23 Philips including, but not limited to, the *Magnavox Secure Fit Earhook Headphones, #9082 100*
24 *09683, MHS100/27, UPC #6 09585 11959 8*. All such headphones with vinyl/PVC earhooks or other
25 components containing DEHP are referred to collectively hereinafter as the "Products."

26 **1.6 Notice of Violation**

27 On or about November 25, 2014, Held served Philips and the requisite public enforcement
28 agencies with a "60-Day Notice of Violation" ("Notice"), alleging that Philips violated Proposition

1 65 by failing to warn its customers and consumers in California of the health hazards associated with
2 exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has
3 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

4 **1.7 Complaint**

5 On September 10, 2015, Held filed the instant action ("Complaint") naming Philips as a
6 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
7 Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Philips as to the allegations contained in the Complaint, that venue is proper in the
20 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date and continuing thereafter, Philips agrees to only
28 manufacture for sale, import for sale, or purchase for sale in or into California, "Reformulated

1 Products.” For purposes of this Consent Judgment, “Reformulated Products” are Products (as
2 defined in Section 1.5) containing DEHP in a maximum concentration of 0.1 percent (1,000 parts per
3 million) in any accessible component (i.e., any component that may be touched during a reasonably
4 foreseeable use) when analyzed pursuant to U.S. Environmental Protection Agency testing
5 methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies
6 for the purpose of determining DEHP content in a solid substance.

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
10 to in the Notice, Complaint, and this Consent Judgment, Philips shall pay \$53,500 in civil penalties.
11 Each civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1)
12 and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
13 Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the funds
14 paid to Held. Held’s counsel shall be responsible for delivering OEHHA’s portion of any civil
15 penalty payment(s) made under this Consent Judgment to OEHHA.

16 **3.1.1 Initial Civil Penalty**

17 Within ten days of the Effective Date, Philips shall make an initial civil penalty payment of
18 \$18,500. Philips shall provide its payment via wire transfer to Held through Held’s counsel and
19 pursuant to the wire transfer instructions to be provided by Held’s counsel to Philips’ counsel.

20 **3.1.2 Final Civil Penalty**

21 On February 15, 2016, Philips shall make a final civil penalty payment of \$35,000. Pursuant
22 to California Code of Regulations, title 11, § 3203(c), the final civil penalty payment shall be waived
23 in its entirety if, no later than January 30, 2016, an officer of Philips provides Held’s counsel with a
24 signed declaration certifying that it is only selling or distributing for sale in California, Reformulated
25 Products as defined by Section 2.1, and that it will continue to only offer Reformulated Products in
26 California in the future. Alternatively, Philips may provide a declaration certifying that it no longer
27 sells the Products for sale in California, and, if it recommences sales of the Products in California in
28 the future, it will only offer Reformulated Products. The option to provide a declaration certifying

1 product reformulation in lieu of making the final civil penalty payment required by this Section is a
2 material term, and time is of the essence.

3 **3.2 Reimbursement of Attorney's Fees and Costs**

4 The parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
6 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
7 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
8 his counsel under general contract principles and the private attorney general doctrine codified at
9 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
10 this Consent Judgment, and through court approval of the same. Within ten days after the Effective
11 Date, Philips shall pay \$40,000.00 by wire transfer payable to Held's counsel, "The Chanler Group,"
12 pursuant to wire transfer instructions to be provided by Held's counsel to Philips' counsel. Philips'
13 payment under this Section 3.2 shall cover all fees and costs incurred by Held investigating, bringing
14 this matter to Philips's attention, litigating and negotiating a settlement in the public interest, and
15 obtaining court approval of the same.

16 **3.3 Payment Timing / Enforcement of Payment Terms**

17 In the event that any payment required by this Consent Judgment is untimely, the Parties
18 agree and acknowledge that (a) Philips shall be liable to Held for 10% simple interest on any unpaid
19 amount(s); (b) after meeting and conferring to attempt to resolve informally, Held may seek to
20 enforce Philips' payment obligations under general contract principles and Code of Civil Procedure
21 sections 664.6; and (c) Held shall be entitled to any fees incurred recovering such settlement
22 payments pursuant to general contract principles and Code of Civil Procedure section 1021.5. The
23 Parties agree and acknowledge that this provision shall not apply in the event Held's counsel fails to
24 timely provide wire instructions to Philips' counsel for payment.

25 **3.4 Payment Address**

26 All payments required by this Consent Judgment shall be delivered via wire transfer pursuant
27 to wire instructions provided by Held's counsel to Philips' counsel.
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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 Philips and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys, and each entity to whom Philips directly or indirectly distributes or sells Products
6 including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,
7 cooperative members, and licensees ("Releasees") from all claims for violations arising under
8 Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or
9 distributed for sale by Philips prior to the Effective Date, as set forth in the Notice. Compliance
10 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
11 exposures to DEHP from Products sold or distributed for sale by Philips after the Effective Date.

12 **4.2 Held's Individual Release of Claims**

13 Held, in his individual capacity only and *not* in his representative capacity, on his own behalf
14 and on behalf of his past and current agents, representatives, attorneys, successors and assignees, also
15 provides a release to Philips and Releasees which shall be effective as a full and final accord and
16 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
17 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether
18 known or unknown, suspected or unsuspected, arising directly or indirectly out of alleged or actual
19 exposures to DEHP in Products sold or distributed for sale by Philips before the Effective Date.

20 **4.3 Philips's Release of Held**

21 Philips, on its own behalf, and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
23 attorneys and other representatives, for any and all actions taken or statements made by Held and
24 his attorneys and other representatives, whether in the course of investigating claims, otherwise
25 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
7 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
8 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, or is otherwise
12 rendered inapplicable by reason of law generally or as to the Products, then Philips may provide
13 written notice to Held of any asserted change in the law, and shall have no further injunctive
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
15 so affected.

16 **8. NOTICE**

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

20 For Philips:

21 General Counsel
22 Philips Electronics North America Corporation
23 3000 Minuteman Road, Suite 109
24 Andover, MA 01810

24 with a copy to:

25 Deanne L. Miller, Esq.
26 Morgan, Lewis & Bockius LLP
27 300 South Grand Avenue, Twenty-Second Floor
28 Los Angeles, CA 90071

For Held:

Proposition 65 Coordinator

1 The Chanler Group
2 2560 Ninth Street
3 Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

12 Held agrees to comply with the reporting form requirements referenced in Health and Safety
13 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
14 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
15 of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
16 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
17 settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a
18 minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the
19 motion, and appearing at the hearing before the Court.

20 **11. MODIFICATION**

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

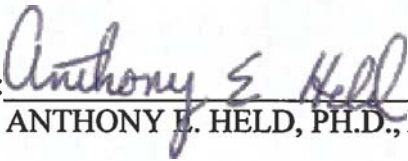
24 **12. AUTHORIZATION**

25 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
26 have read, understand, and agree to all of the terms and conditions contained herein.
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AGREED TO:

Date: 12/11/2015

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

AGREED TO:

Date: _____

By: 
PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION

AGREED TO:

Date: _____

By: 
PHILIPS HOLDING USA, INC.