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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 INTEPLAST GROUP, LTD.; *et al.*,

19 Defendants.
20

Case No. RG15777038

[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 Anthony E. Held, Ph.D., P.E. (“Held”)
4 and Inteplast Group Corporation, successor in interest through merger to Inteplast Group Ltd.
5 (“Inteplast” or “Settling Defendant”), with Held and Inteplast each individually referred to as a
6 “Party” and 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 improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

12 Inteplast employs ten or more persons 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 section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Held alleges that Settling Defendant manufactures, imports, sells, or distributes for sale in
17 California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”), without first providing the
18 exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause cancer.

20 **1.5 Product Description**

21 Inteplast’s products that are covered by this Consent Judgment are defined as vinyl/PVC
22 gloves containing DINP including, without limitation, the *Vinyl Gloves, VF002, #1 07 62935 00026*
23 *1, UPC #7 62935 00026 4*, which are manufactured, imported, distributed, sold and/or offered for
24 sale by Inteplast in the State of California, hereinafter the “Products.”

25 **1.6 Notice of Violation**

26 On April 24, 2015, Held served Inteplast and certain requisite public enforcement agencies
27 with a “60-Day Notice of Violation” (“Notice”) alleging that Inteplast violated Proposition 65 when
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1 the company failed to warn their customers and consumers in California that wearing the Products
2 expose users to DINP.

3 **1.7 Complaint**

4 On July 8, 2015, Held filed the instant action (“Complaint”), naming Inteplast as defendant
5 for its alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Settling Defendant as to the allegations in the Complaint, that venue is proper in the
18 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date that the
22 Court approves this Consent Judgment, including any unopposed tentative rulings.

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

24 **2.1 Reformulated Products**

25 Commencing on the Effective Date and continuing thereafter, Inteplast shall only purchase for
26 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”
27 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
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1 purposes of this Consent Judgment, "Reformulated Products" are products that contain DINP in
2 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
3 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
4 methodology utilized by federal or state agencies for the purpose of determining the DINP content in
5 a solid substance. For compliance with this section, Settling Defendant may rely on product testing
6 results, so long as (1) the testing itself is conducted by a third party accredited laboratory, (2) in
7 accordance with the specific methodology set forth in section 2.1, (3) examples of such testing is
8 included with the certification, per section 3.1.2, delivered to Held's counsel, and (4) Settling
9 Defendant certifies it will ensure the testing is conducted in an on-going manner to ensure
10 reformulation of the Products, and includes such representations in the certification delivered to
11 Held's counsel per section 3.1.2.

12 2.2 Product Warnings

13 Commencing on the Effective Date, Inteplast shall provide clear and reasonable warnings for
14 all Products as set forth in subsections 2.2(a) and (b) for all Products that do not currently have
15 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
16 placed with such conspicuousness as compared with other words, statements, designs, or devices as
17 to render it likely to be read and understood by an ordinary individual under customary conditions
18 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
19 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
20 confusion.

21 (a) Retail Store Sales.

22 (i) **Product Labeling.** Inteplast shall affix a warning to the packaging, labeling,
23 or directly on each vinyl/PVC glove packaging provided for sale in retail outlets in California that
24 states:

25 **WARNING:** This product contains DINP, a chemical known
26 to the State of California to cause cancer.

27 (ii) **Point-of-Sale Warnings.** Alternatively, Inteplast may provide warning signs
28 in the form below to its customers in California with instructions to post the warnings in close

1 proximity to the point of display of the Products. Such instruction sent to Inteplast customers shall be
2 sent by certified mail, return receipt requested.

3 **WARNING:** This product contains DINP, a chemical known
4 to the State of California to cause cancer.

5 Where more than one Product is sold in proximity to other like items or to those that do not
6 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement
7 shall be used:¹

8 **WARNING:** The following products contain DINP, a chemical known
9 to the State of California to cause cancer:

10 [*list products for which warning is required*]

11 **(b) Mail Order Catalog and Internet Sales.** In the event that Inteplast sells Products via
12 mail order catalog and/or the internet, to customers located in California, after March 1, 2016, that
13 are not Reformulated Products, Inteplast shall provide warnings for such Products sold via mail order
14 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
15 internet shall identify the *specific* Product to which the warning applies as further specified in
16 Sections 2.2(b)(i) and (ii).

17 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog
18 shall be in the same type size or larger than the Product description text within the catalog. The
19 following warning shall be provided on the same page and in the same location as the display and/or
20 description of the Product:

21
22 **WARNING:** This product contains DINP, a chemical known
23 to the State of California to cause cancer.

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26 ¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar product are
27 offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
28 reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location as
2 the display and/or description of the Product, Inteplast may utilize a designated symbol to cross
3 reference the applicable warning and shall define the term "designated symbol" with the following
4 language on the inside of the front cover of the catalog or on the same page as any order form for the
5 Product(s):

6 WARNING: Certain products identified with this symbol ▼
7 and offered for sale in this catalog contain DINP,
8 a chemical known to the State of California to
9 cause cancer.

10 The designated symbol must appear on the same page and in close proximity to the display
11 and/or description of the Product. On each page where the designated symbol appears, Inteplast must
12 provide a header or footer directing the consumer to the warning language and definition of the
13 designated symbol.

14 (ii) **Internet Website Warning.** A warning shall be given in conjunction with the
15 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
16 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
17 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
18 during the checkout process. The following warning statement shall be used and shall appear in any
19 of the above instances adjacent to or immediately following the display, description, or price of the
20 Product for which it is given in the same type size or larger than the Product description text:

21 WARNING: This product contains DINP, a chemical known
22 to the State of California to cause cancer.

23 Alternatively, the designated symbol may appear adjacent to or immediately following the
24 display, description, or price of the Product for which a warning is being given, provided that the
25 following warning statement also appears elsewhere on the same web page, as follows:

26 WARNING: This product contains DINP, a chemical known
27 to the State of California to cause cancer.
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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, Inteplast shall pay \$15,000 in civil penalties. Each civil penalty
5 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
6 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
7 Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Held.

8 **3.1.1 Initial Civil Penalty**

9 On or before the thirtieth (30th) day following the mutual execution of this Consent
10 Judgment, Inteplast shall deliver a check for its initial civil penalty payment in the amount of \$ 5,000,
11 issued to “Anthony E. Held, Ph.D., P.E., Client Trust Account” to Dentons US, LLP, c/o Rebecca L.
12 Woodson, Esq., who shall provide The Chanler Group with written confirmation within five days of
13 receipt of the check.

14 Within five (5) days of the Effective Date, Dentons US, LLP shall deliver the check for the
15 initial civil penalty payment to the Chanler Group, at the address named in Section 3.3.1. Held
16 subsequently will direct 75% of the initial civil penalty to OEHHA.

17 **3.1.2 Final Civil Penalty Satisfaction**

18 In advance of final execution and entry of this Consent Judgment, Inteplast agreed that
19 on or before October 30, 2016, Inteplast shall make a final civil penalty payment of \$10,000.
20 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
21 penalty payment shall be waived in its entirety if, no later than October 15, 2016, an officer of
22 Inteplast provides Held with written certification that all of the Products purchased for sale or
23 manufactured for sale in California as of the date of such certification are Reformulated Products as
24 defined by Section 2.1, and that Inteplast will continue to offer only Reformulated Products in
25 California in the future. The option to certify reformulation in lieu of making the final civil penalty
26 payment required by this Section is a material term and time is of the essence. In a demonstration of
27 its proactivity and commitment to compliance with Proposition 65, Inteplast was able to provide such
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1 certification in advance of final execution of this Consent Judgment, and as such, Held considers the
2 final penalty waived.

3 **3.2 Reimbursement of 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, Inteplast expressed a desire to resolve Held's fees and
8 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
9 his counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
11 execution of this Consent Judgment. Inteplast shall, on or before the thirtieth (30th) day following the
12 mutual execution of this Consent Judgment, deliver a check payable to "The Chanler Group" in the
13 amount of fees and costs of \$20,000 to Dentons US, LLP, c/o Rebecca L. Woodson, Esq, who shall
14 provide The Chanler Group with written confirmation within five days of receipt of the check.
15 Within five (5) days of the Effective Date, Dentons US, LLP shall deliver the check to The Chanler
16 Group at the address named in Section 3.3.1 below.

17 **3.3 Payment Procedures**

18 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
19 this Consent Judgment are to be delivered, on or before the thirtieth (30th) day following the mutual
20 execution of this Consent Judgment, to Dentons US, LLP, and released to The Chanler Group and
21 Held within five (5) days of the Effective Date according to the following subsections.

22 **3.3.1 Payment Address**

23 All payments and tax documentation for OEHHA, Held, and his counsel shall be
24 delivered to:

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710

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3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Held's Public Release of Proposition 65 Claims**

5 Held, acting on his own behalf and in the public interest, releases Inteplast and its parents,
6 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
7 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
8 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
9 franchisers, cooperative members, licensors, and licensees ("Downstream Releasees") from any
10 liability for violations alleged in the Notice arising under Proposition 65 for unwarned exposures to
11 DINP from the Products sold by Inteplast prior to 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, also provides a
14 release to Inteplast, Releasees, and Downstream Releasees which shall be effective as a full and final
15 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
16 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
17 kind, arising out of alleged or actual exposures to DINP from the Products sold or distributed for sale
18 by Inteplast before the Effective Date.

19 **4.3 Inteplast's Release of Held**

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

25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

17 For Inteplast:

18 Rebecca L. Woodson, Esq.
19 Dentons US, LLP
20 One Market Plaza
21 Spear Tower, 24th Floor
22 San Francisco, CA 94105

23 For Held:

24 The Chanler Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Held agrees to comply with the reporting form requirements referenced in Health and Safety
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, Held and Inteplast agree to mutually employ their best
10 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
11 judicial approval of their settlement in a timely manner, but no earlier than sixty (60) days from the
12 date that this Consent Judgment is mutually executed. For purposes of this Section, "best efforts"
13 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
14 and supporting the motion for judicial approval.

15 **11. MODIFICATION**

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

19 **12. ENFORCEMENT**

20 Held may, by motion or application for an order to show cause before the Superior Court of
21 Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to
22 bringing any motion or application to enforce the requirements of this Consent Judgment, Held shall
23 provide Settling Defendant with a proposed Notice of Violation and a copy of any test results which
24 purportedly support Held's Notice of Violation. The Parties shall then meet and confer regarding the
25 basis for Held's anticipated motion or application in an attempt to resolve it informally for a period of
26 at least forty-five (45) days. Should such attempts at informal resolution fail, Held may file his
27 enforcement motion or application. This Consent Judgment may only be enforced by the Parties.
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13. AUTHORIZATION

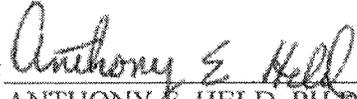
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

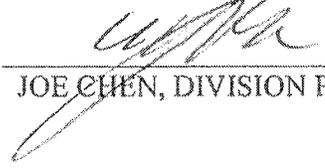
AGREED TO:

Date: 3/7/2016

Date: 3/4/2016

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

INTEPLAST GROUP CORPORATION,
SUCCESSOR IN INTEREST THROUGH
MERGER TO INTEPLAST GROUP, LTD.

By: 
JOE CHEN, DIVISION PRESIDENT

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