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

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

14 Plaintiff,

15 v.

16 OMAR MEDICAL SUPPLIES, INC., *et al.*,

17 Defendants.
18

Case No. 16CV291147

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

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 Omar Medical Supplies, Inc. (“Omar”), with Held and Omar each individually referred
5 to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

18 **1.5 Product Description**

19 For purposes of this Consent Judgment “Products” are defined as (a) vinyl/PVC gloves
20 containing DINP that are manufactured, imported, sold, or distributed for sale by Omar, and (b) sold
21 or distributed for sale in California, regardless of the seller, including, but not limited to, the *OMAR*
22 *Powder Free Vinyl Gloves, Part # 5313/VPF, UPC #1 81148 00038 8.*

23 **1.6 Notice of Violation**

24 On April 24, 2015, Held served Omar, the California Attorney General, and all other requisite
25 public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Omar
26 violated Proposition 65 by failing to warn its customers and consumers in California of the health
27 hazards associated with exposures to DINP from the Products. No public enforcer has commenced
28 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1 **1.7 Complaint**

2 On February 3, 2016, Held filed the instant action (“Complaint”), naming Omar as a
3 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Omar as to the allegations in the Complaint, that venue is proper in the County of
17 Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
18 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
21 the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

22 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

23 **2.1 Commitment to Provide Reformulated Products or Warnings**

24 Subject to the requirements for Medical Grade Products and NSF P155 Certified Products in
25 Section 2.2 below, commencing on the Effective Date and continuing thereafter, Omar shall only
26 purchase for sale in California, manufacture for sale in California, or distribute for sale in California
27 “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products are
28 defined as Products that contain DINP in a maximum concentration of 0.1 percent (1,000 parts per

1 million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
2 3580A and 8270C or equivalent methodologies used to determine DINP content in a solid substance.

3 **2.2 Clear and Reasonable Warnings for Medical Grade Products or NSF P155**

4 **Certified Products**

5 Commencing on the Effective Date and continuing thereafter, for non-Reformulated Products
6 that are “Medical Grade Products” or “NSF P155 Certified Products” only, Omar may sell or
7 distribute such Products for sale in California with a clear and reasonable warning in accordance with
8 this Section. For purposes of this Consent Judgment, Medical Grade Products are defined as
9 Products as defined in the Food and Drug Administration’s Medical Glove Guidance Manual. For
10 purposes of this Consent Judgment, NSF P155 Certified Products are defined as Products that meet
11 NSF International Certification Protocol P155, in conformity with the provisions of the Federal Food,
12 Drug, and Cosmetic Act. Omar further agrees that any warning utilized will be prominently placed in
13 relation to the Product with such conspicuousness when compared to other words, statements,
14 designs, or devices as to render it likely to be read and understood by an ordinary individual under
15 customary conditions of use. For purposes of this Consent Judgment a clear and reasonable warning
16 shall consist of a warning that contains either of the following statements:

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

19 **WARNING:** This product contains a chemical
20 (DINP) that is known to the State
of California to cause cancer

21 If the Product contains a Proposition 65-listed chemical in addition to DINP, that is known to cause
22 birth defects and other reproductive harm:

23 **WARNING:** This product contains chemicals that are
24 known to the State of California to cause
25 cancer and birth defects and other reproductive
harm.

26 In the event that Omar sells Products via an internet website to customers located in California, the
27 warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on
28 the same web page on which a Product is displayed and/or described; (b) on the same page as the
price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase 3

1 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a
2 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
3 description, price, or checkout listing of the Product, provided that the warning statement appears
4 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which
5 the warning applies.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payment**

8 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
9 this Consent Judgment, Omar shall pay \$ 2,000 in civil penalties. The civil penalty payment shall be
10 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
11 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held. Omar shall deliver its
13 payment in a single check for \$ 2,000 made payable to “Anthony E. Held, Client Trust Account.”
14 Plaintiffs’ counsel shall be responsible for delivering OEHHA’s portion of the penalty payment made
15 under this Consent Judgment.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Held and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
21 his counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
23 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
24 on appeal, if any. Under these legal principles, Omar shall pay \$ 17,000 in the form of a check
25 payable to “The Chanler Group” to cover all fees and costs incurred by Held investigating, bringing
26 this matter to Omar’s attention, litigating and negotiating a settlement in the public interest.

1 **3.3 Payment Timing; Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties' settlement. Within fifteen (15) days of the date that this Consent
4 Judgment is fully executed Omar shall deliver the civil penalty payment required by Section 3.1 and
5 the attorneys' fee reimbursement payment required by Section 3.2 to its counsel. Omar's counsel
6 shall provide Held's counsel with written confirmation following his receipt of the settlement funds
7 and, thereafter, hold the payments in trust. Within five (5) days of the Effective Date, Omar's
8 counsel shall deliver the settlement payments to Held's counsel.

9 **3.4 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Held's Public Release of Proposition 65 Claims**

16 Held, acting on his own behalf and in the public interest, releases Omar and its parents,
17 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
18 attorneys ("Releasees"), and each entity to whom Omar directly or indirectly distributes or sells the
19 Products including, without limitation, its downstream customers, distributors, wholesalers, and
20 retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the
21 failure to warn about exposures to DINP from Products manufactured, imported, sold, or distributed
22 for sale by Omar prior to the Effective Date, as set forth in the Notice. Compliance with the terms
23 of this Consent Judgment constitutes compliance with Proposition 65 by Releasees and
24 Downstream Releasees with respect to the failure to warn about exposures to DINP in Products
25 manufactured, imported, sold, or distributed for sale by Omar after the Effective Date.

26 **4.2 Held's Individual Release of Claims**

27 Held, in his individual capacity only and *not* in any representative capacity, also provides a
28 release to Omar, Releasees, and Downstream Releasees, which shall be effective as a full and final

1 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
3 kind, whether known or unknown, suspected or unsuspected, arising out of Products manufactured,
4 imported, sold, or distributed for sale by Omar before the Effective Date.

5 **4.3 Omar's Release of Held**

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

11 **5. COURT APPROVAL**

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

15 **6. SEVERABILITY**

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

19 **7. 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 Products, then Omar may provide
23 written notice to Held of any asserted change in the law, and shall have no further injunctive
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
25 so affected.

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notice required by this Consent Judgment
28 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,

1 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

2 For Omar:

3 Willie Wilson, President
4 Omar Medical Supplies, Inc.
5 600 Holiday Plaza Drive, Suite 130
6 Matteson, IL 60443

7 with a copy to:

8 Levi W. Heath
9 Barnes & Thornburg LLP
10 2029 Century Park East, Suite 300
11 Los Angeles, CA 90067

12 For Held:

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
23 same document.

24 **10. POST EXECUTION ACTIVITIES**

25 Held agrees to comply with the reporting form requirements referenced in Health and Safety
26 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
27 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
28 motion Held shall draft and file. In furtherance of obtaining such approval, the Parties agree to
mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
responding to any objection that any third-party may file or lodge, and appearing at the hearing
before the Court if so requested.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

8
9 **AGREED TO:**

AGREED TO:

10
11 Date: 5/24/2016 _____

Date: 5/23/16 _____

12 By: Anthony E. Held
13 ANTHONY E. HELD, PH.D., P.E.

By: Willie C. Wilson
Willie Wilson, President
OMAR MEDICAL SUPPLIES, INC.