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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION
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16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.

19 SHAMROCK MARKETING CO., INC.; *et*
20 *al.*,

21 Defendants.
22

Case No. RG15784375

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)
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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 Shamrock Marketing Co. Inc. (“Shamrock” or “Settling Defendant”), with Held and Shamrock
5 each individually referred 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

19 **1.5 Product Description**

20 Shamrock’s products that are covered by this Consent Judgment are defined as vinyl/PVC
21 gloves containing DINP including, without limitation, the *Shamrock Synthetic Vinyl Examination*
22 *Gloves, #20213, UPC #6 41932 20213 3*, which are manufactured, imported, distributed, sold and/or
23 offered for sale by Shamrock in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On April 24, 2015, Held served Shamrock and certain requisite public enforcement agencies
26 with a “60-Day Notice of Violation” (“Notice”) alleging that Shamrock violated Proposition 65 when
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1 it failed to warn its customers and consumers in California that vinyl/PVC gloves expose users to
2 DINP.

3 **1.7 Complaint**

4 On September 2, 2015, Held filed the instant action (“Complaint”), naming Shamrock as
5 defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Settling Defendants as to the allegations in the Complaint, that venue is proper in the
19 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Code of Civil Procedure section 664.6 as to the alleged violations of
21 Proposition 65, as set forth in the Notice and Complaint.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date which the
24 Court approves this Consent Judgment, including any unopposed tentative rulings, provided that Held
25 has timely and correctly served California Attorney General with his motion to approve this Consent
26 Judgment.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment and Reformulation Standard**

3 Commencing on the Effective Date, and continuing thereafter, Shamrock shall only purchase
4 for sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated
5 Products.” For purposes of this Consent Judgment, “Reformulated Products” are products that
6 contain DINP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed
7 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

8 **2.2 Defendant’s Quality Control Commitment**

9 In order to ensure compliance with the requirements of Section 2.1, Shamrock shall have the
10 Products tested, at Shamrock’s own expense, by an accredited laboratory located in the United States.
11 Testing shall be conducted in compliance with Section 2.1. Defendant shall randomly select one
12 glove from each of its manufacturers, and/or suppliers, at least twice annually for testing. At the
13 written request of Held, the results of the testing performed pursuant to this section shall be made
14 available to Held on a confidential basis. This Section contains material terms, and failure to deliver
15 test results from each of its manufacturers and/or suppliers shall constitute a material breach of this
16 agreement.

17 **2.3 Defendant’s Obligation for Nonconforming Products**

18 If the results of the testing required herein show the presence of DINP in amounts greater than
19 the Reformulation Standard, Shamrock shall (1) send notice to the manufacturer and/or supplier of
20 said Products that the Products do not comply with Shamrock’s specifications, or the manufacturer
21 and/or supplier’s certification; and (2) cause the next shipment from the manufacturer and/or supplier
22 of said nonconforming Products to be tested in accordance with the methodology in Section 2.1, and
23 Section 2.2. This Section contains material terms, and failure to demonstrate compliance in the event
24 of a nonconforming Product constitutes a material breach of this agreement.

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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, Shamrock shall pay \$5,400 in civil penalties. The civil penalty payment
5 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
6 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
7 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Held. Payment
8 shall be made pursuant to sections 3.3 and 3.4 below.

9 **3.2 Reimbursement of Fees and Costs**

10 The parties acknowledge that Held and his counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
12 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
13 other settlement terms had been finalized, Shamrock expressed a desire to resolve Held’s fees and
14 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
15 his counsel under general contract principles and the private attorney general doctrine codified at
16 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
17 execution of this Consent Judgment. Shamrock shall reimburse Held’s fees and costs in the amount
18 of \$22,600. Payment shall be made pursuant to sections 3.3 and 3.4 below.

19 **3.3 Payment Procedures**

20 All payments due under this Consent Judgment are to be delivered to Miles Prince, Esq., and
21 shall be held in trust pending the Court’s approval of this Consent Judgment. The settlement funds
22 shall be delivered to the address set forth in Section 3.4, as follows:

23 **3.3.1** On or before October 31, 2016, Shamrock shall deliver a check for the civil
24 penalty payment in the amount of \$5,400 to counsel for Shamrock: “Miles Prince, Esq.” Counsel for
25 Shamrock shall deposit the check in a trust account within five (5) business days of receipt.

26 **3.3.2** On or before October 31, 2016, Shamrock shall deliver a check for the
27 attorneys’ fees and costs payment in the amount of \$11,300 to counsel for Shamrock: “Miles Prince,
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1 Esq.” Counsel for Shamrock shall deposit the check in a trust account within five (5) business days
2 of receipt.

3 **3.3.3** Miles Prince, Esq. shall provide The Chanler Group with written confirmation
4 within five (5) business days of receipt of the two checks referenced in sections 3.3.1 and 3.3.2, that
5 the funds have been deposited in counsel’s trust account.

6 **3.3.4** Within five (5) business days of the Effective Date, Miles Prince, Esq. shall
7 issue two checks for the civil penalty payment, one in the amount of \$1,350, to “Anthony E. Held,
8 Ph.D., P.E., Client Trust Account” and one in the amount of \$4,050, to “OEHHA”. Both checks shall
9 be delivered to the address in Section 3.4 below. Held shall subsequently send the check for
10 OEHHA’s 75% portion of the civil penalty to OEHHA.

11 **3.3.5** Within five (5) calendar days of the Effective Date, Miles Prince, Esq. shall
12 issue a check for the attorneys’ fees and costs payment in the amount of \$11,300, to “The Chanler
13 Group.”

14 **3.3.6** On or before December 31, 2016, Shamrock shall issue a check for the
15 attorneys’ fees and costs payment in the amount of \$11,300, to “The Chanler Group” and deliver
16 directly to the address in Section 3.4, below.

17 **3.4 Payment Address**

18 All payments and tax documentation for OEHHA, Held, and his counsel shall be
19 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 **3.5 Representations**

26 Shamrock represents that the sales data for the Products and other information it provided to
27 Held is truthful to the best of its knowledge and a material factor upon which Held has relied to
28 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
Consent Judgment. If, within twelve months of the Effective Date, Held discovers and presents to
Shamrock, evidence demonstrating that the preceding representation was materially inaccurate, then

1 Shamrock shall have 30 days to meet and confer regarding Held’s contention. Should this 30-day
2 period pass without any such resolution between Held and Shamrock, Held shall be entitled to file a
3 formal legal claim including, but not limited to, a claim for damages for breach of contract.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Held’s Public Release of Proposition 65 Claims**

6 Held, acting on his own behalf and in the public interest, releases Shamrock and its parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
8 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
9 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
10 franchisers, cooperative members, licensors, and licensees (“Downstream Releasees”) for violations
11 arising under Proposition 65 for unwarned exposures to DINP from the Products sold by Shamrock
12 prior to the Effective Date, as set forth in the Notice.

13 **4.2 Held’s Individual Release of Claims**

14 Held, in his individual capacity only and *not* in his representative capacity, also provides a
15 release to Shamrock, Releasees, and Downstream Releasees which shall be effective as a full and
16 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
18 kind, arising out of alleged or actual exposures to DINP from the Products sold or distributed for sale
19 by Shamrock before the Effective Date.

20 **4.3 Shamrock’s Release of Held**

21 Shamrock, 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, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by the Parties. Should this Consent Judgment be declared to be null and void
5 at anytime after the payments required hereunder have been paid by Shamrock, Held and The
6 Chanler Group shall immediately refund to Shamrock any amounts previously received by them
7 pursuant to this Consent Judgment.

8 **6. SEVERABILITY**

9 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
10 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
11 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, preempted, or is
15 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Shamrock may
16 provide written notice to Held of any asserted change in the law, and shall have no further obligations
17 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
18 Nothing in this Consent Judgment shall be interpreted to relieve Shamrock from any obligation to
19 comply with any pertinent state or federal toxics control laws.

20 **8. NOTICE**

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

24 For Shamrock:

25 Miles Prince, Esq.
26 1912 East Vernon Ave., Suite 100
27 Los Angeles, CA 90058

1 For Held:

2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

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

22 **11. MODIFICATION**

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

26 **12. ENFORCEMENT**

27 Held may, by motion or application for an order to show cause before the Superior Court of
28 Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to
bringing any motion or application to enforce the requirements of this Consent Judgment, Held shall
provide Shamrock with notice and a copy of any test results which support Held's allegation. The

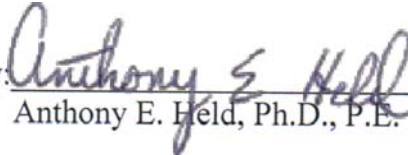
1 Parties shall then meet and confer regarding the basis for Held's anticipated motion or application in
2 an attempt to resolve it informally for a period of at least thirty (30) days. Should such attempts at
3 informal resolution fail, Held may file his enforcement motion or application. This Consent Judgment
4 may only be enforced by the Parties. The prevailing party shall be entitled to reimbursement of
5 reasonable attorneys' fees incurred in enforcement of this Consent Judgment.

6 **13. AUTHORIZATION**

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

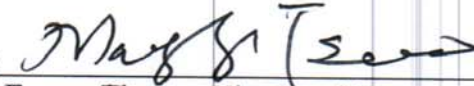
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10 **AGREED TO:**

11 Date: 9/8/2016

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13 By: 
14 Anthony E. Held, Ph.D., P.E.

10 **AGREED TO:**

11 Date: 09/07/16

12
13 By: 
14 ~~Emmy Tjong, Vice President~~
Shamrock Marketing Co., Inc.

15 **MAGGIE TSAO Controller**