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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E., Plaintiff, v. SHELBY GROUP INTERNATIONAL, INC.; and DOES 1-150, inclusive, Defendants.	Case No.: CIV-1503162 **[PROPOSED] CONSENT JUDGMENT**

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E. and Shelby Group International, Inc.

This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held"), and Shelby Group International, Inc. ("Shelby"), with Held and Shelby collectively referred to as the "Parties."

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

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 Shelby Group International, Inc.

Held alleges that Shelby employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1.4 General Allegations

Held alleges that Shelby has manufactured, imported, distributed and/or sold vinyl/PVC gloves containing Diisononyl phthalate ("DINP") without the requisite Proposition 65 warnings. DINP is listed under Proposition 65 as a chemical known to cause cancer.

1.5 Product Description

The products that are covered by this Consent Judgment are vinyl/PVC gloves containing DINP including, but not limited to, *Memphis Gloves Sensaguard Powdered Vinyl Disposable Gloves, Style #5025, RN# 48583* that are manufactured, imported, sold and/or distributed for sale in California by Shelby (hereinafter the "Products").

1.6 Notice of Violation

On April 24, 2015, Held served Shelby and various public enforcement agencies, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on Shelby's alleged failure to warn consumers that the Products exposed users in California to DINP. To the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.7 Complaint

On August 27, 2015, Held filed a complaint in the Superior Court in and for the County of Marin against Shelby and Does 1 through 150, *Held v. Shelby Group International, Inc., et al.*, Case No. CIV-1503162 ("Complaint" or "Action"), alleging violations of Proposition 65, based on the alleged exposures to DINP contained in certain vinyl/PVC gloves sold by Shelby.

1.8 No Admission

Shelby denies the material, factual and legal allegations contained in Held's Notice and Complaint and maintains that all products that it has sold, manufactured, imported and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Shelby of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Shelby of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Shelby'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 Shelby as to the allegations contained in the Complaint, that venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall be the date this Consent Judgment is entered by the Court, including any unopposed Tentative Ruling.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulated Products

Commencing on the Effective Date, and continuing thereafter, Shelby shall only sell, offer for sale, or distribute for sale in California, Reformulated Products, or Products that contain a clear and reasonable warning pursuant to Section 2.2. For purposes of this Consent Judgment, "Reformulated Products" are defined as those Products containing DINP in concentrations less than

0.1 percent (1,000 parts per million) in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining the DINP content in a solid substance.

2.3 <u>Clear and Reasonable Warnings</u>

Commencing on or before the Effective Date, Shelby shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales. Shelby shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

Or

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

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

(b) Mail Order Catalog and Internet Sales. In the event that Shelby sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Shelby shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the specific Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

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

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

Or

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

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

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

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

Or

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

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

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears,

Shelby must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

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

Or

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

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

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

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

Or

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

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

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty

In settlement of all the claims referred to in this Consent Judgment, Shelby shall pay a total of $3,500 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Held. Held's counsel shall be responsible for remitting Shelby's penalty payment(s) under this Consent Judgment to OEHHA. Within five days of the Effective Date, Shelby shall make a civil penalty payment of $3,500. Shelby shall provide its payment in a single check made payable to "Anthony E. Held, Client Trust Account" to be delivered to the address provided in Section 3.3, below.

3.2 Reimbursement of Plaintiff's Fees and Costs

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee issue to be resolved after the material terms of the agreement had been settled. Shelby then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed (and to be performed) in this matter, except fees that may be incurred in connection with a third-party, including the Office of the Attorney General, appeal (if any). Under these legal principles, Shelby shall pay the amount of $25,000 to reimburse Held's fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest. This payment shall be made to "The Chanler Group," on or before the Effective Date.

3.3 Payment Procedures

All payments owed to Held, pursuant to Sections 3.1 through 3.3, shall be delivered to the following payment address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Release of Proposition 65 Claims

Held acting on his own behalf and in the public interest releases Shelby, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, stockholders, employees, attorneys, and each entity to whom Shelby directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to DINP contained in the Products that were manufactured, distributed, or sold by Shelby prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DINP from the Products as set forth in the Notice.

4.2 Held's Individual Release of Claims

Held also, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DINP in the Products manufactured, distributed or sold by Shelby.

4.3 Shelby's Release of Held

Shelby on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been

taken or made) by Held and his attorneys and other representatives prior to the Effective Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable by preemption or reason of law generally as to the Products, then Shelby shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

To Shelby:

Bruce Nye, Esq.
adams | nye | becht LLP
222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

To Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Held and Shelby agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall draft and file, and Shelby shall join. If any third party objection to the noticed motion is filed, Held and Shelby shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: 2/12/2016	Date:_____
By: Anthony E Held	By: _____
Plaintiff, Anthony E. Held, Ph.D., P.E.	Mitch Lewellen, CEO Shelby Group International, Inc.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: _____	Date: 1/25/16
By: _____	By: _____
Plaintiff, Anthony E. Held, Ph.D., P.E.	Mitch Lewellen, CEO Shelby Group International, Inc.