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10 ANTHONY E. HELD, PH.D., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.

19 BISON PRODUCTION COMPANY, THE
20 HOME DEPOT, INC., and DOES 1-150
21 inclusive,

22 Defendants.
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Case No. 115CV288443

[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 defendant Bison Production Company (“Bison), with Held and Bison 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 For purposes of this agreement, Bison employs ten or more individuals and is a “person in the
12 course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 Plaintiff’s Allegations**

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

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP
21 including, but not limited to, the *Bison Life Vinyl Powder Free Multipurpose Gloves, BL-NPFCVG-*
22 *03, UPC #8 51272 00454 4*, manufactured, imported, sold, or distributed for sale in California by
23 Bison, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On or about June 13, 2015, Held served Bison and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Bison violated Proposition 65
27 by failing to warn its customers and consumers in California that the Products expose users to DINP.
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1 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
2 prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On November 24, 2015, Held filed an instant action (“Complaint”) naming Bison for its
5 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

7 Bison denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and it maintain that all of the products that it has sold and distributed for sale in
9 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
10 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
11 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
12 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
13 Section shall not, however, diminish or otherwise affect Bison’s obligations, responsibilities, and
14 duties under 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 Bison as to the allegations contained in the Complaint, that venue is proper in the
18 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
22 the Consent Judgment is approved and entered by the Court.

23 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNING**

24 **2.1 Commitment to Reformulate or Warn**

25 Commencing on March 1, 2016, and continuing thereafter, Bison agrees to only manufacture,
26 distribute or purchase for sale in California: (a) “Reformulated Products”, or (b) Products that bear a
27 clear and reasonable health hazard warning, pursuant to Section 2.2 below. For purposes of this
28 Consent Judgment, “Reformulated Products” are defined as Products with a maximum concentration

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

4 **2.2 Clear and Reasonable Warnings**

5 Bison agrees that as of the Effective Date, all Products it sells and/or distributes in California,
6 which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to
7 this Section. Bison further agrees that the warning will be prominently placed with such
8 conspicuousness when compared with other words, statements, designs, or devices as to render it
9 likely to be read and understood by an ordinary individual under customary conditions before
10 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the
11 Products shall consist of a warning affixed to the packaging, or, if no packaging exists, directly on,
12 each non reformulated Product sold in California, and shall contain one of the following statements.

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

15 **or**

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

19 In the event that Bison conducts any sales of Products in or into California online via the internet, the
20 warning shall be made visible to the purchaser(s) of the Products prior to the time at which the
21 purchase is completed and shall meet the requirements specified above with regard to the
22 prominence, size and visibility of the warning message.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Civil Penalty Payments**

25 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
26 this Consent Judgment, Bison shall pay \$4,000 in civil penalties. The civil penalty payment shall be
27 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
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1 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
2 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held. To address the
3 requirements of this paragraph Bison shall, by no later than February 15, 2016, provide (a) one check
4 made payable to “OEHHA” in the amount of \$3,000 to which tax identification number 68-0284486
5 shall be assigned and (b) a separate check made payable to “Anthony E. Held, Ph.D., P.E.” for \$1,000
6 to which a tax identification number provided by plaintiff’s counsel by February 12, 2016, shall be
7 assigned. Both of these checks shall be sent to the address found in Section 3.3 below.

8 **3.2 Reimbursement of Attorney’s Fees and Costs**

9 The parties acknowledge that Held and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
11 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
12 other settlement terms had been finalized, Bison expressed a desire to resolve Held’s fees and costs.
13 The parties then attempted to (and did) reach an accord on the compensation due to Held and his
14 counsel under general contract principles and the private attorney general doctrine codified at
15 California Code of Civil Procedure section 1021.5 for all work performed or to be performed by
16 Held and his counsel in this matter, exclusive of fees and costs incurred on appeal, if any. Bison
17 shall pay \$24,000 for the fees and costs incurred by Held investigating, bringing this matter to
18 Bison’s attention, litigating and negotiating a settlement in the public interest. Under these legal
19 principles, Bison shall pay a total of \$24,000 in three (3) separate checks, each in the amount of
20 \$8,000 to “The Chanler Group” to which tax identification number 94-3171522 shall be assigned.
21 All three of these checks will be held in trust until the date on which the Consent Judgment is
22 approved and entered by the Court. The first of these three (3) checks, each in the amount of
23 \$8,000, shall be due on March 1, 2016, the second check due on April 1, 2016, and the third due on
24 May 1, 2016. These checks shall also be sent to the address found in Section 3.3 below.

25 **3.3 Issuance of Payments.**

26 If payments precede approval of the Consent Judgment from the Court, the plaintiff shall
27 hold such funds in a trust account. If the Court does not approve the settlement in a timely fashion
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1 (i.e., September 1, 2016), then such funds shall be returned to Bison. All payments owed pursuant to
2 Section 3.1 and 3.2 shall be delivered to the following address:

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Held’s Public Release of Proposition 65 Claims**

10 Held, acting on his own behalf and in the public interest, releases Bison and its parents,
11 subsidiaries, affiliated entities under common ownership, and each of its directors, officers,
12 employees, and attorneys (“Releasees”) and each entity to whom the Releasees directly or indirectly
13 distribute or sell the Products including, but not limited to, its downstream distributors, wholesalers,
14 customers, retailers (including, but not limited to, The Home Depot Inc. “Home Depot” and
15 Amazon.com, Inc.), franchisers, cooperative members, licensors and licensees (“Downstream
16 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DINP from
17 Products purchased by Bison prior to the Effective Date, as set forth in the Notice.

18 **4.2 Held’s Individual Release of Claims**

19 Held, in his individual capacity only and *not* in his representative capacity, also provides a
20 release to Bison, Releasees, and Downstream Releasees which shall be effective as a full and final
21 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
22 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
23 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
24 exposures to DINP in products purchased by Bison before the Effective Date.

25 **4.3 Bison’s Release of Held**

26 Bison, on its own behalf, and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
28 attorneys and other representatives, for any and all actions taken or statements made by Held and

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1 his attorneys and other representatives, whether in the course of investigating claims, otherwise
2 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

23 **To Bison:**

24 Nazeeya Kokinti
25 President
26 Bison Production Company
27 13010 Morris Road,
28 Building 1, Suite 600
Alpharetta, GA 30004

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3 **To Held:**

4 The Chanler Group
5 Attn: Proposition 65 Coordinator
(Held v. Bison/DINP in Gloves CJ)
6 2560 Ninth Street
7 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

10 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

14 **10. POST EXECUTION ACTIVITIES**

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

23 **11. DISMISSAL OF THE HOME DEPOT, INC.**

24 Held agrees that, two days following the Effective Date, Held will file a request for dismissal
25 without prejudice as to defendant The Home Depot, Inc.
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2 **12. MODIFICATION**

3 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
4 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
5 Party, and the entry of a modified consent judgment by the Court. Should any final judgment or
6 administrative action issued prior to December 31, 2016 result in the removal of DINP from the
7 Proposition 65 list of chemicals, the injunctive relief obligations set forth in Section 2 shall be
8 rendered void and unenforceable.

9 **13. AUTHORIZATION**

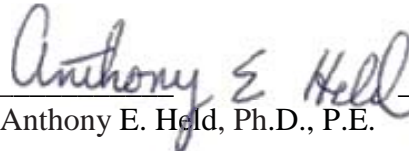
10 The undersigned are authorized to execute this Consent Judgment and have read, understood,
11 and agree to all of the terms and conditions contained herein.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 2/12/16

Date: _____

15 By: 
16 Anthony E. Held, Ph.D., P.E.

By: _____
Nazeeya Kokinti, President
Bison Production Company

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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: _____

Date: 2/12/2016

By: _____
Anthony E. Held, Ph.D., P.E.

By: Nazeeya K.
Nazeeya Kokinti, President
Bison Production Company