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3 THE CHANLER GROUP
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10 Attorneys for Plaintiff
11 ANTHONY E. HELD, PH.D., P.E.,

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 LOLLICUP USA INC., *et al.*,

17 Defendants.

Case No. 15CV288847

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*, and
Cal. 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 defendant Lollicup USA INC. (“Lollicup”), with Held and Lollicup each individually
5 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Lollicup 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 Lollicup manufactures, imports, sells, and distributes for sale in California,
16 vinyl/PVC gloves that contain diisononyl phthalate (“DINP”), and that it does so without first
17 providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition
18 65 as a chemical known 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 that
21 are manufactured, imported, sold, or distributed for sale in California by Lollicup (“Products”)
22 including, but not limited to, the *Karat Vinyl Powder-Free Gloves, Item # FP-GV1007, UPC #8*
23 *15812 01585 8*.

24 **1.6 Notice of Violation**

25 On July 13, 2015, Held served Lollicup, the California Attorney General, and all other
26 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that
27 Lollicup violated Proposition 65 when it failed to warn its customers and consumers in California of
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1 the health hazards associated with exposures to DINP from the Products. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On December 9, 2015, Held filed the instant action (“Complaint”), for the violations of
5 Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 Lollicup denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and maintains that all of the products 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 Lollicup’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 Lollicup as to the allegations in the Complaint, that venue is proper in Santa Clara
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
19 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 motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

23 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

24 Commencing on October 1, 2016, and continuing thereafter, Lollicup agrees to only
25 manufacture for sale or purchase for sale in California, “Reformulated Products.” For purposes of
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1 this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DINP
2 concentration of 1,000 parts per million (0.1 %) in any component analyzed pursuant to U.S.
3 Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent
4 methodologies utilized by state or federal agencies for the purpose of determining DINP content in a
5 solid substance.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
9 to in this Consent Judgment, Lollicup shall pay \$20,000 in civil penalties. The civil penalty payment
10 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
11 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
12 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Held. Held’s
13 counsel shall be responsible for delivering any penalty paid under this Consent Judgment to OEHHA.

14 **3.1.1 Initial Civil Penalty**

15 Lollicup shall make an initial civil penalty payment of \$6,000. Lollicup shall provide its
16 payment in a single check made payable to “Anthony E. Held, Client Trust Account.”

17 **3.1.2 Final Civil Penalty**

18 On July 15, 2016, Lollicup shall make a final civil penalty payment of \$14,000.
19 Pursuant to title 11 California Code of Regulations section 3203(c), Held agrees that the final civil
20 penalty payment shall be waived in its entirety if, no later than July 1, 2016, an officer of Lollicup
21 provides Held with a signed declaration certifying that all of the Products Lollicup is shipping for
22 sale or distributing for sale in California as of the date of its declaration are Reformulated Products,
23 and that Lollicup will continue to only offer Reformulated Products for sale in California in the
24 future. The option to provide a declaration certifying completed reformulation in lieu of making the
25 final civil penalty payment otherwise required by this Consent Judgment is a material term, and time
26 is of the essence.

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1 **3.2 Reimbursement of Fees and Costs**

2 The parties acknowledge that Held and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Held then expressed a
5 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The
6 parties then attempted, but were unable, to reach an accord on the compensation due to Held and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure § 1021.5, for all work performed in the matter. The parties do
9 agree, however, that Held and his counsel are entitled to their reasonable attorneys’ fees and costs for
10 all work performed through the Effective Date and reasonably to be performed in connection with the
11 terms set forth in this agreement and the Alternative Dispute Resolution (“ADR”) process. The
12 Parties agree to have Plaintiff’s outstanding fee and cost claims adjudicated by binding mediation
13 (“ADR Process”), the costs of which shall be paid by Lollicup. Held and Lollicup further agree that
14 the mediator’s determination shall be final and binding upon the Parties. The mediation shall be
15 conducted at either the American Arbitration Association (“AAA”) or Judicial Arbitration and
16 Mediation Services (“JAMS”) offices in San Francisco, California within thirty days of the Court’s
17 approval of this Consent Judgment, with payment to occur within ten days of receiving notice of the
18 mediator’s award. The mediation shall be conducted by a single mediator; and Held and his
19 counsel’s entitlements to their fees and costs for this ancillary process shall be consistent with
20 California Law. The payment of the awarded fees shall be made to The Chanler Group within ten
21 days of receiving notice of the award at the address provided in section 3.4.

22 **3.3 Payments Held in Trust**

23 With the exception of the final civil penalty payment required by Section 3.1.2, all payments
24 due under this Consent Judgment shall be delivered within five days of the date this Consent
25 Judgment is fully executed by the Parties, and held in trust by Lollicup’s counsel until the Court
26 approves the Parties’ settlement. Lollicup’s counsel shall confirm in writing to Held’s counsel upon
27 its receipt of the settlement funds from Lollicup and, thereafter, hold the funds in trust until the
28 Effective Date, and deliver the payments to Held’s counsel within five days of the Court’s approval

1 of this Consent Judgment. In the event the final civil penalty payment becomes due prior to the
2 Effective Date, Lollicup shall deliver the funds to its counsel to hold in trust until, and disburse
3 within five days after, the Effective Date.

4 **3.4 Payment Address**

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

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Held's Public Release of Proposition 65 Claims**

13 Held, acting on his own behalf and in the public interest, releases Lollicup and its parents,
14 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
15 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
16 Products including, but not limited to, it's downstream distributors, wholesalers, customers,
17 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
18 any violations arising under Proposition 65 for the failure to warn about exposures to DINP from
19 Products sold by Lollicup prior to the Effective Date, as set forth in the Notice. Compliance with
20 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
21 failure to warn about exposures to DINP in Products sold by Lollicup after the Effective Date.

22 **4.2 Held's Individual Release of Claims**

23 Held, in his individual capacity only and *not* in his representative capacity, also provides a
24 release to Lollicup, Releasees, and Downstream Releasees which shall be effective as a full and final
25 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
27 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
28 exposures to DINP in Products sold or distributed for sale by Lollicup before the Effective Date.

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1 **4.3 Lollicup’s Release of Held**

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

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
10 has been fully executed by the Parties, or by such additional time as the Parties may agree to in
11 writing.

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of California
18 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
19 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Lollicup may
20 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
21 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
22 so affected.

23 **8. NOTICE**

24 All correspondence and notice required by this Consent Judgment shall be in writing and sent
25 by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a
26 recognized overnight courier to the following addresses:

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1 For Lollicup:

2 Alan Yu, Chief Executive Officer
3 Lollicup USA Inc.
4 6185 Kimball Ave.
5 Chino, CA 91708

6 with a copy to:

7 Michael Oberbeck, Jr., Esq.
8 Burkhalter Kessler
9 Clement & George LLP
10 2020 Main Street,
11 Suite 600
12 Irvine, CA 92614

13 For Held:

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

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. POST EXECUTION ACTIVITIES**

26 Held agrees to comply with the reporting form requirements referenced in Health and Safety
27 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
28 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. 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, cooperating on the drafting and filing of the necessary moving papers,
supporting the motion, and appearing at the hearing before the Court.

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 by the Court thereon; or (ii) a successful motion or application
4 of any Party, and the entry of a modified consent judgment by the Court thereon.

5 **12. AUTHORIZATION**

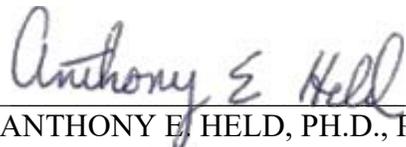
6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.

8
9 **AGREED TO:**

AGREED TO:

10
11 Date: 4/21/2016

Date: _____

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

14 By: _____
15 Alan Yu, Chief Executive Officer
16 LOLLICUP USA INC.

1 **11. MODIFICATION**

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4 of any Party, and the entry of a modified consent judgment by the Court thereon.

5 **12. AUTHORIZATION**

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

8
9 **AGREED TO:**

AGREED TO:

10
11 Date: _____

Date: 4/22/16

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

By:  _____
Alan Yu, Chief Executive Officer
LOLLICUP USA INC.