

1 Clifford A. Chanler, SBN 135534
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118
E-mail: cliff@chanler.com
5

6 Attorneys for Plaintiff Anthony E. Held, Ph.D.,
P.E.
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

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

11 Plaintiff,

12 vs.

13 SALLY BEAUTY HOLDINGS, INC., et al.,

14 Defendants.
15

Case No. 115CV288448

[PROPOSED] CONSENT JUDGMENT

16
17 **1. INTRODUCTION**

18 **1.1 Parties**

19 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
20 P.E. ("Held"), and defendant Sally Beauty Holdings, Inc., ("Sally Beauty") with Held and Sally
21 Beauty each individually referred to as a "Party" and collectively as the "Parties."

22 **1.2 Plaintiff**

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

26 **1.3 Defendant**

27 Sally Beauty employs ten or more individuals and is a "person in the course of doing
28 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986. Health

1 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

2 **1.4 General Allegations**

3 Held alleges that Sally Beauty manufactures, imports, sells, and distributes for sale in
4 California, vinyl gloves that contain diisononyl phthalate (“DINP”), and that it does so without
5 first providing the exposure warning required by Proposition 65. Sally Beauty disputes this and
6 other contentions of fact and law asserted by Held. DINP is listed pursuant to Proposition 65 as a
7 chemical known to the State of California to cause cancer.

8 **1.5 Product Description**

9 The products covered by this Consent Judgment are vinyl gloves containing DINP that are
10 manufactured, imported, sold, or distributed for sale in California by Sally Beauty (“Products”)
11 including, but not limited to, the *Salon Care Professional Medium 100 Black Vinyl Gloves,*
12 *#584052. UPC #5 033102 811040.*

13 **1.6 Notice of Violation**

14 On July 13, 2015, Held served Sally Beauty, the California Attorney General, and all other
15 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that
16 Sally Beauty violated Proposition 65 when it failed to warn its customers and consumers in
17 California of the health hazards associated with exposures to DINP from the Products as required
18 by Proposition 65. Sally Beauty disputes this contention, and other contentions of fact and law
19 asserted by Held. No public enforcer has commenced and is diligently prosecuting an action to
20 enforce the violations alleged in the Notice.

21 **1.7 Complaint**

22 On November 24, 2015, Held filed the instant action (“Complaint”), for the violations of
23 Proposition 65 that are the subject of the Notice.

24 **1.8 No Admission**

25 Sally Beauty denies the material, factual, and legal allegations contained in the Notice and
26 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
27 including the Products, have been, and are, sold in compliance with all laws. Nothing in this
28 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue

1 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
2 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
3 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
4 defense the Parties may have in any other legal proceedings. This Consent Judgment is the
5 product of negotiation and compromise and is accepted by the Parties for the purpose of settling,
6 compromising and resolving the issues disputed in this action. This Section shall not, however,
7 diminish or otherwise affect Sally Beauty's obligations, responsibilities, and duties under this
8 Consent Judgment.

9 **1.9 Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over Sally Beauty as to the allegations in the Complaint, that venue is proper in Santa
12 Clara County, and that the Court has jurisdiction to enter and enforce the provisions of this
13 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

14 **1.10 Effective Date**

15 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
16 the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the
17 Court.

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

19 Commencing within ninety (90) days from the Effective Date, and continuing thereafter,
20 Sally Beauty agrees to only manufacture for sale or purchase for sale in California, "Reformulated
21 Products." For purposes of this Consent Judgment, "Reformulated Products" are defined as
22 Products with a maximum DINP concentration of 1,000 parts per million (0.1 %) in any
23 component analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
24 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the
25 purpose of determining DINP content in a solid substance.

26 **3. MONETARY SETTLEMENT TERMS**

27 **3.1 Civil Penalty Payment**

28 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims

1 referred to in this Consent Judgment, Sally Beauty shall pay a civil penalty payment of \$2,000.
2 The civil penalty payment shall be allocated according to Health and Safety Code section
3 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office
4 of Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the
5 funds remitted to Held. Sally Beauty shall provide its payment in a single check made payable to
6 “Anthony E. Held, Client Trust Account.” Held’s counsel shall be responsible for delivering any
7 penalty paid under this Consent Judgment to OEHHA.

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, Sally Beauty expressed a desire to resolve Held’s fees
13 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
14 Held and his counsel under general contract principles and the private attorney general doctrine
15 codified at Code of Civil Procedure section 1021.5 for all work performed through the mutual
16 execution of this Consent Judgment. Sally Beauty shall pay \$15,000 for the fees and costs
17 incurred by Held investigating, bringing this matter to the attention of Sally Beauty’s
18 management, litigating, and negotiating a settlement in the public interest.

19 **3.3 Payments Held in Trust**

20 All payments due under this Consent Judgment shall be delivered within five days of the
21 date this Consent Judgment is fully executed by the Parties, and held in trust by Sally Beauty’s
22 counsel until the Court approves the Parties’ settlement. Sally Beauty’s counsel shall confirm in
23 writing to Held’s counsel upon its receipt of the settlement funds from Sally Beauty and,
24 thereafter, hold the funds in trust until the Effective Date, and deliver the payments to Held’s
25 counsel within ten (10) business days of the Court’s approval of this Consent Judgment.

26 **3.4 Payment Address**

27 All payments required by this Consent Judgment shall be delivered to:
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1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

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, hereby irrevocably and forever
7 waives and releases Sally Beauty and its parents, subsidiaries, and affiliated entities, as well as
8 the manufacturers, jobbers and upstream distributors of the Products and their directors, officers,
9 employees and attorneys, and also the directors, officers, employees, and attorneys of Sally
10 Beauty (collectively the "Releasees") and each entity to whom it directly or indirectly distributes
11 or sells the Products including, but not limited to, it's downstream distributors, wholesalers,
12 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream
13 Releasees") for any violations arising under Proposition 65 for the failure to warn about
14 exposures to DINP from Products sold by Sally Beauty prior to the Effective Date.. Compliance
15 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect
16 to the failure to warn about exposures to DINP in Products sold by Sally Beauty after the
17 Effective Date.

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

19 Held, in his individual capacity only and *not* in his representative capacity, also hereby
20 irrevocably and forever releases Sally Beauty, the Releasees, and the Downstream Releasees
21 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
22 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
23 demands of Held of any nature, character or kind, whether known or unknown, suspected or
24 unsuspected, arising out of alleged or actual exposures to DINP in Products sold or distributed for
25 sale by Sally Beauty, the Releasees and/or the Downstream Releasees as of the Effective Date.

26 Held, in his individual capacity only, and not in his representative capacity, also hereby
27 waives and relinquishes all rights and benefits with respect to the claims released as to the
28 Releasees and Downstream Releases under the provisions of California *Civil Code §1542* which

1 such section states:

2 "A general release does not extend to claims which the creditor does not know or suspect
3 to exist in his or her favor at the time of executing the release, which if known by him or her must
4 have materially affected his or her settlement with the debtor."

5 **4.3 Sally Beauty's Release of Held**

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

12 Sally Beauty, on its own behalf, and on behalf of its past and current agents,
13 representatives, attorneys, successors, and assignees, also hereby waives and relinquishes all rights
14 and benefits under the provisions of California *Civil Code §1542* which such section states:

15 "A general release does not extend to claims which the creditor does not know or suspect
16 to exist in his or her favor at the time of executing the release, which if known by him or her must
17 have materially affected his or her settlement with the debtor."

18 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

27 **7. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the state of

1 California and apply within the state of California. In the event that Proposition 65 is repealed,
2 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
3 then Sally Beauty may provide written notice to Held of any asserted change in the law, and shall
4 have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to
5 the extent that, the Products are so affected.

6 **8. NOTICE**

7 All correspondence and notice required by this Consent Judgment shall be in writing and
8 sent by: (i) personal delivery; (ii) by electronic mail to the email address indicated below; AND
9 (iii) a recognized overnight courier to the following addresses:

10 For Sally Beauty:

11 Matthew O. Haltom, Senior Vice President,
12 General Counsel and Secretary ,
13 Sally Beauty Holdings, Inc.
14 3001 Colorado Boulevard
15 Denton, TX 76210
16 mhaltom@sallybeauty.com

17 with a copy to:

18 Steven L. Feldman, Esq.
19 Goldfarb, Sturman & Averbach
20 15760 Ventura Blvd.,
21 Suite 1900
22 Encino, CA 91436
23 sfeldman@gsalaw.com

24 For Held:

25 Proposition 65 Coordinator
26 The Chanler Group
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
cliff@chanler.com

Any Party may, from time to time, specify in writing to the other, 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 portable document format (PDF) signature, each of which shall be deemed an original, and all of which,

1 when taken together, shall constitute one and the same document.

2 **10. POST EXECUTION ACTIVITIES**

3 Held agrees to comply with the reporting form requirements referenced in Health and
4 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
5 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
6 settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their
7 best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to
8 obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best
9 efforts" shall include, at a minimum, cooperating on the drafting and filing of the necessary
10 moving papers, supporting the motion, and appearing at the hearing before the Court.

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

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

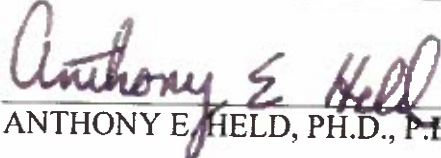
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AGREED TO:

AGREED TO:

Date: 3/27/2016

Date: 03.28.2016

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

By: 
Mathew O. Haltom, Senior Vice President,
General Counsel and Secretary,
SALLY BEAUTY HOLDINGS, INC.