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12 THE SAFETY ZONE, LLC

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF CONTRA COSTA
15 UNLIMITED CIVIL JURISDICTION
16

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

18 Plaintiff,

19 v.

20 SEIDMAN ASSOCIATES; and DOES 1-150,
21 inclusive,

22 Defendants.

Case No. MSC16-01125

[PROPOSED]
CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*,
& Cal. Code Civ. Proc. § 664.6)

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”) and The Safety Zone, LLC (“Safety Zone”), with Held and Safety Zone each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

10 **1.3 Defendant**

11 Safety Zone 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 and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Safety Zone manufactures, sells, and distributes for sale in California, gloves with vinyl/PVC components containing the phthalate chemical, di(2-ethylhexyl)phthalate (“DEHP”), vinyl/PVC gloves containing DEHP, vinyl/PVC rainwear containing DEHP, and vinyl/PVC aprons containing DEHP. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Held alleges that Safety Zone failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its vinyl/PVC gloves, gloves with vinyl/PVC components, vinyl/PVC rainwear, and vinyl/PVC aprons.

22 **1.5 Covered Products Description**

23 The “Products” covered by this Consent Judgment are gloves with vinyl/PVC components containing DEHP including, but not limited to, *Industrial Work Gloves, RN # 66741*, vinyl/PVC gloves containing DEHP including, but not limited to, *Black Dipped Gloves, RN 66741*, vinyl/PVC rainwear containing DEHP including, but not limited to, *The Safety Zone Rainsuit, Style W335-PP, RN 66741*, and vinyl/PVC aprons containing DEHP including, but not limited to, *Apron, Z-DAV06-35X48*, that are manufactured, sold or distributed for sale in California by Safety Zone.

1 **1.6 Notices of Violation**

2 On July 13, 2015, Held served Safety Zone and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation, (“Notice”), alleging that Safety Zone violated Proposition 65
4 when it failed to warn its customers and consumers in California of the health hazards associated with
5 exposures to diisononyl phthalate (“DINP”) from its vinyl/PVC gloves. The allegations in the Notice
6 were resolved by S.P. Richards Company, Safety Zone’s affiliated entity under common ownership,
7 in the matter of *Held v. Genuine Parts Company*, San Francisco Superior Court Case No. CGC-15-
8 547451.

9 On October 28, 2015, Held served Safety Zone and the requisite public enforcement agencies
10 with a Supplemental 60-Day Notice of Violation, (“Supplemental Notice”), alleging that Safety Zone
11 violated Proposition 65 when it failed to warn its customers and consumers in California of the health
12 hazards associated with exposures to DEHP from its vinyl/PVC gloves, gloves with vinyl/PVC
13 components, vinyl/PVC rainwear and vinyl/PVC aprons.

14 The Notice and Supplemental Notice are collectively referred to herein as the “Notices.” No
15 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
16 alleged in the Notices.

17 **1.7 Complaint**

18 On June 10, 2016, Held filed the instant action (“Complaint”), for the violations of
19 Proposition 65 that are the subject of the Notice. On or about December 21, 2016, Held filed a First
20 Amended Complaint, naming Safety Zone as a defendant and adding allegations of the violations of
21 Proposition 65 that are the subject of the Supplemental Notice. The Complaint and First Amended
22 Complaint are collectively referred to herein as the “Complaint.”

23 **1.8 No Admission**

24 Safety Zone denies the material, factual, and legal allegations contained in the Notices and
25 Complaint, and maintains that all of the products that it has sold and distributed in California,
26 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
27 Judgment shall be construed as an admission by Safety Zone of any fact, finding, conclusion, issue of
28 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed

1 as an admission by Safety Zone of any fact, finding, conclusion, issue of law, or violation of law,
2 such being specifically denied by Safety Zone. This Section shall not, however, diminish or
3 otherwise affect Safety Zone’s obligations, responsibilities, and duties under this Consent Judgment.

4 **1.9 Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over Safety Zone as to the allegations in the Complaint, that venue is proper in Contra
7 Costa County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
8 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
11 the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

12 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

13 **2.1 Reformulation Standard**

14 Reformulated Products are defined as Products containing concentrations of less than 0.1
15 percent (1000 parts per million) of DEHP in each accessible component when analyzed by a
16 laboratory accredited by the State of California, a federal agency, NVLAP (National Volunteer
17 Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-
18 ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International
19 Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson
20 Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC),
21 or similar nationally recognized accrediting organization pursuant to U.S. Environmental Protection
22 Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
23 state agencies for the purpose of determining phthalate content in a solid substance.

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1 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
2 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held.

3 **3.2 Representations**

4 Safety Zone represents that the sales data and other information concerning its Products,
5 knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to Held in
6 negotiating this Consent Judgment was truthful to its knowledge at the time of execution of this
7 Consent Judgment and a material factor upon which Held relied to determine the amount of civil
8 penalties assessed pursuant to Health & Safety Code § 25249.7.

9 **3.3 Attorneys’ 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 reached, Safety Zone expressed a desire to resolve Held’s fees and
14 costs. The Parties reached an accord on the compensation due to Held and his counsel under general
15 contract principles and the private attorney general doctrine codified at Code of Civil Procedure
16 § 1021.5 for all work performed in this matter. Under these legal principles, within five (5) days after
17 the Effective Date, Safety Zone agrees to pay \$40,000 in a single check made payable to “The
18 Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of
19 Safety Zone’s management, and negotiating a settlement in the public interest.

20 **3.4 Payment Address**

21 All payments under this Consent Judgment shall be delivered to the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Held’s Individual Release of Safety Zone**

27 This Consent Judgment is a full, final and binding resolution between Held, acting on his
28 own behalf and in the public interest, and Safety Zone, of any violation of Proposition 65 that was

1 or could have been asserted by Held on behalf of himself, his past and current agents,
2 representatives, attorneys, successors, and assignees, against Safety Zone, its parents, subsidiaries,
3 affiliated entities under common ownership, directors, officers, employees, attorneys, including
4 Seidman Associates, and each entity to whom Safety Zone directly or indirectly distributes or sells
5 the Products as well as the vinyl/PVC gloves containing DINP resolved by S.P. Richards Company,
6 Safety Zone's affiliated entity under common ownership, in the matter of *Held v. Genuine Parts*
7 *Company*, San Francisco Superior Court Case No. CGC-15-547451, including its downstream
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
9 licensees ("Releasees"), based on the alleged or actual failure to warn about exposures to DINP in
10 the vinyl/PVC gloves, subject to the Judgment entered in the matter of *Held v. Genuine Parts*
11 *Company*, San Francisco Superior Court Case No. CGC-15-547451, and DEHP contained in the
12 Products sold or distributed for sale by Safety Zone in California before the Effective Date, as
13 alleged in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance
14 with Proposition 65 with respect to the failure to warn about exposures to DEHP in Products sold by
15 Safety Zone after the Effective Date.

16 In further consideration of the promises and agreements herein, Held, on behalf of himself,
17 his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives
18 all his rights to institute or participate in, directly or indirectly, any form of legal action and releases
19 all claims that he may have, including, without limitation, all actions and causes of action in law
20 and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
21 expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising
22 under Proposition 65 with respect to exposures to DINP in the vinyl/PVC gloves, subject to the
23 Judgment entered in the matter of *Held v. Genuine Parts Company*, San Francisco Superior Court
24 Case No. CGC-15-547451, and DEHP from the Products manufactured, distributed, sold and/or
25 offered for sale by Safety Zone before the Effective Date.

26 **4.2 Safety Zone's Release of Held**

27 Safety Zone, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and/or assignees, hereby waives any and all claims against Held and his

1 attorneys and other representatives, for any and all actions taken or statements made by Held and
2 his attorneys and other representatives, whether in the course of investigating claims, seeking to
3 enforce Proposition 65 against it in this matter, or with respect to the DINP Products and the DEHP
4 Products.

5 **5. COURT APPROVAL**

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

10 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW**

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

20 **8. NOTICE**

21 Unless specified herein, all correspondence and notice required to be provided pursuant to this
22 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or
23 certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the
24 other at the following addresses:

25 For Safety Zone:

26 Kathleen Eidbo
27 Senior Counsel
28 Genuine Parts Company
2999 Wildwood Parkway
Atlanta, Georgia 30339-3073

For Held:

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

1 With a copy on behalf of Safety Zone to:

2 Tina I. Mangarpan, Esq.
3 Ford, Walker, Haggerty & Behar, LLP
4 One World Trade Center, 27th Floor
Long Beach, CA 90831-2700

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

7 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

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

20 **11. MODIFICATION**

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

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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 Parties and have read, understand, and agreed to all of the terms and conditions contained herein.

4 **AGREED TO:**

AGREED TO:

5
6 Date: 12/31/2016

Date: 1/11/17

7 By: Anthony E. Held
8 Anthony J. Held, Ph.D., P.E.

By: K. Eidbo
Kathleen Eidbo, Senior Counsel
Genuine Parts Company

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