

1 Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PH.D., P.E.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 MIDWEST QUALITY GLOVES, INC., *et al.*

16 Defendants.
17

Case No. CIV1601324

[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 plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”), and defendant Midwest Quality Gloves, Inc. (“Midwest”), with Held and Midwest each
5 individually 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 Midwest employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Midwest manufactures, imports, sells, or distributes for sale in California,
16 gloves that contain DINP and/or DEHP without first providing the exposure warning required by
17 Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause cancer. DEHP is listed pursuant to Proposition 65 as a chemical that is known to
19 cause reproductive harm or birth defects.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are gloves containing DEHP and/or DINP
22 that are manufactured, imported, sold, or distributed for sale in California by Midwest (“Products”)
23 including, but not limited to the: (i) *Midwest Quality Gloves Vinyl Disposable All Purpose Gloves,*
24 *Style 770, UPC No. 0 72264 07707 4*, which Held has alleged contain DINP; and (ii) *Midwest*
25 *Quality Gloves Chemical 100% PVC Coated Glove, Style 710, UPC #0 72264 07107 2*, which Held
26 has alleged contain DEHP.

27 **1.6 Notices of Violation**

28 On July 31, 2015, Held served Midwest and all of the requisite public enforcement agencies

1 with a 60-Day Notice of Violation (“Notice”), alleging that Midwest violated Proposition 65 by
2 failing to warn its customers and consumers in California of the health hazards associated with
3 exposures to DINP in the Products.

4 Thereafter, On March 23, 2016, Held served Midwest and all of the requisite public
5 enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”),
6 alleging, in addition to the Notice claims involving DINP, that Midwest also violated Proposition 65
7 when it failed to warn its customers and consumers in California of the health hazards associated with
8 exposures to DEHP from the Products.

9 The Notice and Supplemental Notice are referred to collectively herein as the Notices. No
10 public enforcer has commenced and is diligently prosecuting an action to enforce the alleged
11 violations that are the subject of either of the Notices.

12 **1.7 Complaint**

13 On April 12, 2016, Held filed the instant action (“Complaint”) naming Midwest as a
14 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
15 the Notice. At the time he filed the Complaint, however, Held had not perfected standing to bring an
16 action to enforce the claims alleged in the Supplemental Notice. The Parties stipulate and agree that,
17 on the later of sixty-six days after service of the Supplemental Notice, or the Court’s approval of this
18 Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the claims and
19 alleged violations that are the subject of the Supplemental Notice.

20 **1.8 No Admission**

21 Midwest denies the material, factual, and legal allegations contained in the Notices and
22 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
23 including the Products, have been and are in compliance with all laws. Nothing in this Consent
24 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
25 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
26 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
27 not, however, diminish or otherwise affect Midwest’s obligations, responsibilities, and duties under
28 this Consent Judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Midwest as to the allegations in the Complaint, that venue is proper in the Marin County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” means the date on which the Motion for Approval of the Consent Judgment is granted by the Court.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate or Warn

Commencing on April 15, 2016, and continuing thereafter, Midwest shall only manufacture, sell, or distribute for sale in California, either (a) Reformulated Products; or (b) Products that are offered with a clear and reasonable Warning pursuant to Section 2.3.

2.2 Reformulated Products

For purposes of this Consent Judgment, Reformulated Products are Products containing DEHP and/or DINP in concentrations that do not exceed 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DINP and/or DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Midwest that are not Reformulated Products, Midwest will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Midwest further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning for the

1 Products satisfying these criteria shall consist of a warning affixed directly to a Product or its
2 accompanying labeling or packaging sold in California containing one of the following statements:

3 For Products containing DEHP

4 **WARNING:** This product contains a chemical known to the
5 State of California to cause birth defects or
6 other reproductive harm.

6 For Products containing DINP:

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

9 For Products that contain (i) DEHP *and* DINP, or (ii) DEHP or DINP *and* another Proposition 65-
10 listed chemical:

11 **WARNING:** This product contains chemicals known to
12 the State of California to cause cancer and
13 birth defects or other reproductive harm.

13 In the event that Midwest sells Products via its internet website to customers located in California, the
14 warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on
15 the same web page on which a Product is displayed and/or described; (b) on the same page as the
16 price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase
17 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a
18 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
19 description, price, or checkout listing of the Product, provided that the warning statement appears
20 elsewhere on the same web page in a manner that clearly associates it with the product(s) to which
21 the warning applies. .

22 3. MONETARY SETTLEMENT TERMS

23 3.1 Civil Penalty Payment

24 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
25 this Consent Judgment, Midwest shall pay \$3,000 in civil penalties. Each civil penalty payment shall
26 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five
27 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
28 (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Held. Midwest shall provide its
penalty payment in a single check made payable to “Anthony E. Held, Client Trust Account.” Held’s

1 counsel shall be responsible for delivering Midwest's penalty payment to OEHHA.

2 **3.2 Reimbursement of Attorney's Fees and Costs**

3 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
5 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
6 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
7 his counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
9 execution of this Consent Judgment. Under these legal principles, Midwest will pay \$25,000 for the
10 fees and costs incurred by Held investigating, bringing this matter to Midwest's attention, litigating,
11 and negotiating a settlement in the public interest.

12 **3.3 Payments Held in Trust**

13 All payments due under this Consent Judgment shall be held in trust until such time as the
14 Court approves the Parties' settlement. Within five (5) days of the date that this Consent Judgment
15 is fully executed by the Parties, all payments shall be delivered to Midwest's counsel and held until
16 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.
17 Within five business days of the Court's approval of this Consent Judgment, Midwest's counsel
18 shall deliver all of the settlement payments required by this Consent Judgment to Held's counsel.

19 **3.4 Payment Address**

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

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

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 Held's Public Release of Proposition 65 Claims**

28 Held, acting on his own behalf and in the public interest, releases Midwest and its parents,
subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the

1 Products including, but not limited to, it's downstream distributors, wholesalers, customers,
2 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
3 any violation arising under Proposition 65 for unwarned exposures to DINP and/or DEHP from
4 Products sold by Midwest prior to the Effective Date, as set forth in the Notices. Compliance with
5 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
6 alleged or actual failure to warn about exposures to DINP or DEHP in Products sold by Midwest
7 before the Effective Date, as set forth in the Notice.

8 **4.2 Held's Individual Release of Claims**

9 Held, in his individual capacity only and *not* in his representative capacity, also provides a
10 release to Midwest, Releasees, and Downstream Releasees which shall be effective as a full and final
11 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
12 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
13 kind, whether known or unknown, suspected or unsuspected, arising out of exposures to DINP and/or
14 DEHP in Products sold or distributed for sale by Midwest before the Effective Date.

15 **4.3 Midwest's Release of Held**

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

21 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

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

8 **8. NOTICE**

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

12 For Midwest:

13 Stephen Franke, President
14 Midwest Quality Gloves, Inc.
15 835 Industrial Road
16 Chillicothe, MO 64601

17 with a copy to:

18 Ryan Landis, Esq.
19 Polsinelli, LLP
20 2049 Century Park East, Suite 2900
21 Los Angeles, CA 90067

22 For Held:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 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.

29 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. POST EXECUTION ACTIVITIES**

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

10 **11. MODIFICATION**

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

14 **12. AUTHORIZATION**

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

17
18 **AGREED TO:**

AGREED TO:

19
20 Date: 5/3/2016

Date: MAY 2, 2016

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

By: 
Stephen Franke, President
MIDWEST QUALITY GLOVES, INC.

23
24
25
26
27
28