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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 THE GORILLA GLUE COMPANY; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. RG16825055

[PROPOSED] CONSENT JUDGMENT

Action Filed: July 28, 2016

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held”) and defendant Gorilla Glue Company (“Gorilla Glue”), with Dr. Held and Gorilla
5 Glue each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

7 Dr. Held is an individual residing in the State of California who seeks to promote awareness
8 of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 The Gorilla Glue Company**

11 Gorilla Glue employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code Section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Gorilla Glue has manufactured, imported, distributed and/or sold
16 vinyl/PVC tool grips containing diisononyl phthalate (“DINP”) without the requisite Proposition 65
17 warnings. On December 20, 2013, DINP became listed under Proposition 65 as a chemical known
18 to cause cancer.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC tool grips including,
21 but not limited to, the *Chu Supply Screwdriver, UPC #0 52427 26021 5* that are manufactured,
22 imported, sold and/or distributed for sale in California by Gorilla Glue (hereinafter the “Products”).

23 **1.6 Notice of Violation**

24 On or about August 10, 2015, Dr. Held served Gorilla Glue and the requisite public
25 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Gorilla Glue
26 violated Proposition 65 when it failed to warn its customers and consumers in California that its
27 Products expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has
28 commenced and is diligently prosecuting the allegations set forth in the Notice.

1 During the investigation of this matter it has come to the attention of the Parties that certain
2 Products may also contain di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed under Proposition
3 65 as a chemical known to cause birth defects (and reproductive harm). As such, Gorilla Glue has
4 committed to only sell, offer for sale, or distribute for sale in California, Reformulated Products
5 containing DEHP concentrations less than 0.1 percent (1,000 parts per million), per section 2 below.

6 **1.7 Complaint**

7 On July 28, 2016, Dr. Held filed a complaint in the Superior Court in and for the County of
8 Alameda against Gorilla Glue and Does 1 through 150, *Held v. The Gorilla Glue Company, et al.*,
9 Case No. RG16825055 (“Complaint” or “Action”), alleging violations of Proposition 65, based on
10 the alleged exposure to DINP contained in certain vinyl/PVC tool grips sold by Gorilla Glue.

11 **1.8 No Admission**

12 Gorilla Glue denies the material, factual, and legal allegations contained in the Notice and
13 Complaint. Gorilla Glue maintains that all of the products that it has sold and distributed in
14 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
15 Consent Judgment shall be construed as an admission by Gorilla Glue of any fact, finding,
16 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
17 constitute or be construed as an admission by Gorilla Glue of any fact, finding, conclusion, issue of
18 law, or violation of law, such being specifically denied by Gorilla Glue. However, this section shall
19 not diminish or otherwise affect Gorilla Glue’s obligations, responsibilities, and duties under this
20 Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over the Parties as to the allegations contained in the Complaint, that venue is proper in
24 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
25 this Consent Judgment.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall be the date this
28 Consent Judgment is entered by the Court, including any unopposed Tentative Ruling.

1 **2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT**

2 Commencing on the Effective Date, Gorilla Glue shall only sell, offer for sale, or distribute
3 for sale in California, Reformulated Products. For purposes of this Consent Judgment,
4 “Reformulated Products” are defined as those Products containing DINP and/or DEHP each in
5 concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when
6 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
7 8270C, or any other methodology utilized by federal or state agencies for the purpose of
8 determining the DINP and/or DEHP content in a solid substance.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty**

11 Pursuant to Health and Safety Code Section 25249.7(b), Gorilla Glue shall pay civil
12 penalties in the amount of \$3,500. The penalty payment shall be allocated according to Health and
13 Safety Code Section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California
14 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
15 penalty paid to Dr. Held. Dr. Held’s counsel shall be responsible for remitting Gorilla Glue’s
16 penalty payment under this Settlement Agreement to OEHHA. Within two (2) business days of the
17 Effective Date Gorilla Glue shall issue a check payable to “The Chanler Group, Anthony E. Held
18 Client Trust Account” in the amount of \$3,500, to the address provided in section 3.3 below.

19 **3.2 Reimbursement of Attorney’s Fees and Costs**

20 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
22 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
23 other settlement terms had been finalized, Gorilla Glue expressed a desire to resolve Dr. Held’s fees
24 and costs. Gorilla Glue agrees to pay Dr. Held and his counsel under the private attorney general
25 doctrine codified at California Code of Civil Procedure Section 1021.5, for all work performed
26 through the mutual execution of this agreement, including without limitation the fees and costs
27 incurred as a result of investigating, bringing this matter to Gorilla Glue’s attention, negotiating a
28 settlement, and seeking court approval of the same. Gorilla Glue agrees to pay \$30,000 in fees and

1 costs within two (2) business days of the Effective Date in the form of a check made payable to
2 “The Chanler Group.”

3 **3.3 Payment Procedures**

4 All payments required by this Consent Judgment shall be delivered to the following
5 address:

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 Dr. Held’s Release of Proposition 65 Claims**

13 This Consent Judgment is a full, final and binding resolution of all claims that were or could
14 have been asserted in the Action arising out of Gorilla Glue’s alleged failure to provide Proposition
15 65 warnings for the Products. Dr. Held, acting on his own behalf and in the public interest, releases
16 Gorilla Glue and its parents, subsidiaries, affiliated entities under common ownership, directors,
17 officers, employees, and attorneys (“Releasees”) and each entity to whom Gorilla Glue directly or
18 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
19 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
20 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
21 to DINP from the Products manufactured, imported, distributed or sold by Gorilla Glue prior to the
22 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
23 constitutes compliance with Proposition 65 by Gorilla Glue with respect to the alleged or actual
24 failure to warn about exposures to DINP from Products manufactured, sold or distributed for sale by
25 Gorilla Glue after the Effective Date.

26 **4.2 Dr. Held’s Individual Release of Claims**

27 Dr. Held also, in his individual capacity only and *not* in his representative capacity, on
28 behalf of himself, his past and current agents, representatives, attorneys, successors and/or
assignees, provides a release herein which shall be effective as a full and final accord and
satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,

1 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
2 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
3 actual exposures to DINP and/or DEHP in the Products manufactured, distributed or sold by
4 Releasees and Downstream Releasees..

5 **4.3 Gorilla Glue's Release of Dr. Held**

6 Gorilla Glue on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys and
8 other representatives, for any and all actions taken or statements made (or those that could have
9 been taken or made) by Dr. Held and his attorneys and other representatives prior to the Effective
10 Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
11 against it in this matter with respect to the Products.

12 **4.4 Mutual Waiver of Code of Civil Procedure Section 1542**

13 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which
14 provides as follows:

15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
16 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
17 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
18 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
19 **WITH THE DEBTOR.**

20 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
21 representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and
22 all rights and benefits which he/it may have under, or which may be conferred upon him/it by the
23 provisions of Civil Code Section 1542 as well as under any other state or federal statute or common
24 law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits
25 pertaining to the released matters, as specifically defined by sections 4.2 and 4.3, above.

1 **5. COURT APPROVAL**

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

6 **6. SEVERABILITY**

7 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
8 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
9 remaining shall not be adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
13 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
14 Consent Judgment are rendered inapplicable by preemption or reason of law generally as to the
15 Products, or, in the event that a court of competent jurisdiction or an agency of the State of
16 California determines that products that contain DINP and/or DEHP do not require Proposition 65
17 warnings, then all of Gorilla Glue's obligations set forth in this Consent Judgment to either
18 reformulate the Products or provide warnings on the Products shall terminate and Gorilla Glue shall
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
20 the Products are so affected.

21 **8. NOTICE**

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

To: Gorilla Glue
Nick Ragland, Jr., CFO
The Gorilla Glue Company
4550 Red Bank Expressway
Cincinnati, OH 45227

To: Dr. Held
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With copy to:

Ann G. Grimaldi, Esq.
Grimaldi Law Offices
50 California Street, Suite 1500
San Francisco, CA 94111

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Dr. Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code Section 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Held and Gorilla Glue agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of this Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code Section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Dr. Held shall draft and file, and Gorilla Glue shall not oppose. If any third party objection to the noticed motion is filed, Dr. Held and Gorilla Glue shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of this Consent Judgment and shall be treated as such in the event of a breach.

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12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court.

13. AUTHORIZATION

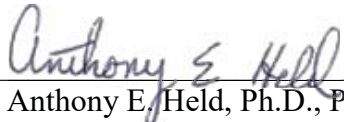
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 8/23/2016

Date: _____

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

By: _____
Peter Ragland, President
The Gorilla Glue Company

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
4 of any Party and entry of a modified Consent Judgment by the Court.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9
10 AGREED TO:

 AGREED TO:

11
12 Date: _____

 Date: 8/8/2016

13
14 By: _____

 By:  _____

 Anthony E. Held, Ph.D., P.E.

 Peter Ragland, President
 The Gorilla Glue Company