

1 Cliff Chanler, State Bar No. 135534
2 Hudson Bair, State Bar No. 172593
3 Josh Voorhees, State Bar No. 241436
4 Troy Bailey, State Bar No. 277424
5 THE CHANLER GROUP
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710-2565
9 Telephone: (510) 848-8880
10 Facsimile: (510) 848-8118
11 cliff@chanler.com
12 hudson@chanler.com
13 josh@chanler.com
14 troy@chanler.com

15 Attorneys for Plaintiffs
16 ANTHONY E. HELD, PH.D., P.E.;
17 PETER ENGLANDER;
18 WHITNEY R. LEEMAN, PH.D.; and
19 JOHN MOORE

20
21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA
23 UNLIMITED CIVIL JURISDICTION
24

25 ANTHONY E. HELD, PH.D., P.E.; PETER
26 ENGLANDER; WHITNEY R. LEEMAN,
27 PH.D.; and JOHN MOORE,

28 Plaintiffs,

v.

READY AMERICA, INC.; ABLE PLANET,
INCORPORATED; E.S.I. CASES &
ACCESSORIES, INC.; GROCERY OUTLET
INC.; QUICK FITTING, INC.; TAP
PLASTICS, INC., A CALIFORNIA
CORPORATION; and DOES 1-150, inclusive,

Defendants.

Case No. RG16803507

**[PROPOSED] CONSENT JUDGMENT
AS TO READY AMERICA, INC.**

(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 Ready America, Inc. ("Ready America"), with Held and Ready America 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 Ready America employs ten or more individuals and is a "person in the course of doing
12 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Ready America manufactures, imports, sells, or distributes for sale in
16 California, Vinyl/PVC Gloves that contain Dissononyl phthalate ("DINP") without first providing the
17 exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a
18 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 Ready America, including
22 but not limited to, the *Ready America First Aid Outdoor Kit (Vinyl Gloves), VG-1, UPC #7 53962*
23 *74002 5*, hereinafter the "Products".

24 **1.6 Notice of Violation**

25 On or about December 1, 2015, Held served Ready America, and certain requisite public
26 enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Ready America
27 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
28

1 expose users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and
2 is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On February 10, 2016, Held filed the instant action ("Complaint") naming Ready America as
5 a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice. On February 16, 2016, Held filed the first amended complaint naming additional
7 defendants for the alleged violations of Health and Safety Code section 25249.6 that are the subject
8 of additional Notices.

9 **1.8 No Admission**

10 Ready America denies the material, factual, and legal allegations contained in the Notice and
11 Complaint, and maintains that all of the products it has sold and distributed for sale in California,
12 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
13 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
14 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
16 not, however, diminish or otherwise affect Ready America's obligations, responsibilities, and duties
17 under this Consent Judgment.

18 **1.9 Jurisdiction and Venue**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over
20 Ready America as to the allegations contained in the Complaint, that venue is proper in the County of
21 Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
22 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
25 the Motion for Approval of the Consent Judgment is granted by the Court.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Ready America shall only
4 purchase for sale, manufacture, sell, or distribute for sale in California, “Reformulated Products.”
5 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products that contain
6 DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
7 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
8 methodology utilized by federal or state government agencies for the purpose of determining DINP
9 content in a solid substance.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
13 this Consent Judgment, Ready America shall pay \$5,000 in civil penalties. The civil penalty payment
14 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
15 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
16 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Held.

17 **3.2 Reimbursement of Attorney’s Fees and Costs**

18 The parties acknowledge that Held and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
20 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
21 other settlement terms had been finalized, Ready America expressed a desire to resolve Held’s fees
22 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held
23 and his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
25 execution of this Consent Judgment. Ready America shall pay \$27,000 for the fees and costs
26 incurred by Held investigating, bringing this matter to Ready America’s attention, litigating and
27 negotiating a settlement in the public interest.

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1 **3.3 Payments**

2 All payments shall be held in trust by Defendant’s counsel until the Consent Judgment is
3 approved by the court. Within five (5) business days of the Court’s approval of this Consent
4 Judgment, Defendant’s counsel shall tender the civil penalty payment and attorneys’ fee and costs
5 reimbursements required by Sections 3.1 and 3.2, as follows:

6 **3.3.1** On or before August 1, 2016, Ready America shall make the following
7 payments: (1) \$3,750 to “OEHHA;” (2) \$1,250 to “Anthony E Held, Ph.D., P.E. Client Trust
8 Account;” and (3) \$6,000 to “The Chanler Group.”

9 **3.3.2** On or before September 1, 2016, Ready America shall make a payment of
10 \$11,000 to “The Chanler Group.”

11 **3.3.3** On or before October 1, 2016, Ready America shall make a payment of
12 \$10,000 to “The Chanler Group.”

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Held’s Public Release of Proposition 65 Claims**

23 Held, acting on his own behalf and in the public interest, releases Ready America and its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
26 Products including, but not limited to, it’s downstream distributors, wholesalers, customers,
27 retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for
28 any violations arising under Proposition 65 for unwarned exposures to DINP from Products sold by
Ready America prior to the Effective Date, as set forth in the Notice. Compliance with the terms of

1 this Consent Judgment constitutes compliance with Proposition 65 by Ready America and any other
2 Releasee or Downstream Releasee with respect to the alleged or actual failure to warn about
3 exposures to DINP in Products manufactured, sold or distributed for sale by Ready America on and
4 after the Effective Date.

5 **4.2 Held's Individual Release of Claims**

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

13 **4.3 Ready America's Release of Held**

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

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
22 has been fully executed by the Parties.

23 **6. ENFORCEMENT AND PREVAILING PARTY**

24 In the event any dispute between the Parties arises out of this Consent Judgment, the Parties
25 shall meet and confer in an attempt to resolve the dispute informally, for a period of thirty (30) days.
26 Should such attempts at informal resolution fail, the disputing party may seek to enforce the terms of
27 this Consent Judgment by any means under the law, including by motion or application for an order
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1 to show cause before the Court. The prevailing party shall be entitled to recover its reasonable
2 attorney's fees and costs incurred as a result of such motion or application.

3 **7. SUCCESSORS AND ASSIGNS**

4 This Consent Judgment shall be binding upon and inure to the benefit of the Parties hereto
5 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of
6 them.

7 **8. SEVERABILITY**

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

11 **9. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California
13 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
14 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ready
15 America may provide written notice to Held of any asserted change in the law, and shall have no
16 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Ready
18 America from any obligation to comply with any pertinent state or federal toxics control laws.

19 **10. NOTICE**

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

23 **Ready America**
24 Jeff Primes, President
25 Ready America, Inc.
1399 Specialty Drive
Vista, CA 92081

Joshua A. Bloom, Esq.
Meyers Nave
555 12th Street, Suite 1500
Oakland, CA 94607

26 **Held**
27 Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **12. POST EXECUTION ACTIVITIES**

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

16 **13. MODIFICATION**

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

20 **14. AUTHORIZATION**

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

23 **AGREED TO:**

AGREED TO:

24
25 Date: July 22, 2016

Date: July 21, 2016

26
27 By: 
ANTHONY E. HELD, PH.D., P.E.

By: 
Jeff Primes, President
READY AMERICA, INC.