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

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 MOTIVATION DESIGN, LLC,

17 Defendant.

Case No. CGC-16-552331

[PROPOSED] CONSENT JUDGMENT

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

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 Motivation Design, LLC ("Motivation Design"), with Held and Motivation Design
5 each 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 Motivation Design 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, Health and
13 Safety Code § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Motivation Design import, manufacturers, sells, or distributes for sale in
16 California vinyl/PVC gloves that contain diisononyl 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 cause cancer.

19 **1.5 Products Defined**

20 For purposes of this Consent Judgment, "Products" are defined as vinyl/PVC gloves
21 containing DINP that are imported, sold, or distributed for sale in California by Motivation Design
22 including, but not limited to, the gloves offered in connection with the *Kurgo Pet First Aid Kit, Part*
23 *No. 01263, UPC No. 8 13146 01263 5.*

24 **1.6 Notice of Violation**

25 On December 29, 2015, Held served Motivation Design, and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation ("Notice"), alleging that Motivation Design violated
27 Proposition 65 by failing to warn its customers and consumers in California of the health hazards
28

1 associated with exposures to DINP from the Products. No public enforcer has commenced and is
2 diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 2, 2016, Held filed the instant action (“Complaint”), naming Motivation Design as a
5 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Motivation Design as to the allegations in the Complaint, that venue is proper in the
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 this Consent Judgment is approved by the Court.

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

25 Commencing on the Effective Date and continuing thereafter, Motivation Design agrees to
26 only import for sale, manufacture for sale, or purchase for sale in California, Reformulated Products.
27 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products containing
28 a maximum DINP concentration of 1,000 parts per million (0.1%) in any component analyzed

1 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
2 equivalent methodologies utilized by federal or state agencies for the purpose of determining DINP
3 content in a solid substance. On August 1, 2016, an officer of Motivation Design shall provide Held
4 with a signed declaration, certifying that as of the date of its declaration all Products Motivation
5 Design is selling, shipping for sale, or distributing for sale in California, are Reformulated Products,
6 and that Motivation Design will continue to offer only Reformulated Products in California in the
7 future.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payments**

10 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
11 to in the Notice, Complaint, and this Consent Judgment, Motivation Design shall pay \$2,500 in civil
12 penalties. The civil penalty payment shall be allocated according to Health and Safety Code §
13 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
14 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
15 (25%) of the penalty retained by Held. Held’s counsel shall be responsible for delivering OEHHA’s
16 portion of any penalty payment(s) made under this Consent Judgment. Motivation Design shall
17 provide its payment in a single check made payable to “Anthony E. Held, Client Trust Account.”

18 **3.2 Reimbursement of Attorney’s Fees and Costs**

19 The parties acknowledge that Held and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, the Parties negotiated the compensation due to Held and
23 his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
25 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
26 appeal, if any. Motivation Design shall pay \$21,500 for all fees and costs incurred by Held
27 investigating, bringing this matter to Motivation Design’s attention, litigating and negotiating a
28 settlement in the public interest.

1 **3.3 Payment Timing; Enforcement of Payment Terms**

2 Motivation Design shall deliver all payments required by this Consent Judgment to Held’s
3 counsel within five days of the Effective Date. In the event that any payment required by this
4 Consent Judgment is untimely, the Parties agree and acknowledge that (a) Motivation Design shall
5 be liable to Held for 10% simple interest on any unpaid amount(s); (b) Held may seek to enforce
6 Motivation Design’s payment obligations under general contract principles and Code of Civil
7 Procedure sections 664.6; and (c) Held shall be entitled to any fees incurred recovering such
8 settlement payments pursuant to general contract principles and Code of Civil Procedure section
9 1021.5.

10 **3.4 Payment Address**

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

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held’s Public Release of Proposition 65 Claims**

19 Held, acting on his own behalf and in the public interest, releases Motivation Design and its
20 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
21 and attorneys (“Releasees”), and each entity to whom Motivation Design directly or indirectly
22 distributes or sells the Products including its downstream customers (including, without limitation,
23 Petco Animal Supplies, Inc.), distributors, wholesalers, and retailers (“Downstream Releasees”) for
24 any violation arising under Proposition 65 pertaining to the failure to warn about exposures to DINP
25 from Products sold or distributed for sale by Motivation Design prior to the Effective Date, as set
26 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
27 with Proposition 65 with respect to exposures to DINP from Products sold or distributed for sale by
28 Motivation Design after the Effective Date.

1 **4.2 Held’s Individual Release of Claims**

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

9 **4.3 Motivation Design’s Release of Held**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if it is not approved and entered by the Court within one year after it has been fully
18 executed by the Parties, or by such additional time to which the Parties agree in writing.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of California
25 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
26 rendered inapplicable by reason of law generally or as to the Products, then Motivation Design may
27 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
28

1 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
2 so affected.

3 **8. NOTICE**

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

7 For Motivation Design:

8 Christopher Spater, President
9 Motivation Design, LLC
10 2-D Fanaras Drive
11 Salisbury, MA 019521

12 with a copy to Motivation Design's counsel:

13 Corrie L. Plant, Esq.
14 Pillsbury Winthrop Shaw Pittman LLP
15 725 South Figueroa Street, Suite 2800
16 Los Angeles, CA 90017-5406

17 For Held:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
28 same document.

10 **10. POST EXECUTION ACTIVITIES**

11 Held agrees to comply with the reporting form requirements referenced in Health and Safety
12 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
13 § 25249.7(f), a noticed motion for judicial approval of the settlement is required, which motion Held

1 shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ
2 their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and
3 to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best
4 efforts" shall include, at a minimum, supporting the motion, responding to any third-party objections,
5 and appearing at the hearing on the motion, if so requested.

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

11 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
12 have read, understand, and agree to all of the terms and conditions contained herein.

13
14 **AGREED TO:**

AGREED TO:

15
16 Date: 7/12/2016

Date: 7/5/16

17
18 By: 

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

By: 

Christopher Spater, President
MOTIVATION DESIGN, LLC