

1 WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding
2 benzophenone in The Procter & Gamble Company's and its subsidiaries' (collectively, "P&G")
3 Covered Products, they hereby agree as follows:

4 **1. INTRODUCTION**

5 **1.1 Parties**

6 This consent judgment ("Consent Judgment") is entered into by and between plaintiff Dr.
7 Held and P&G with Dr. Held and P&G collectively referred to as the "Parties" and individually as a
8 "Party."

9 **1.2 Anthony E. Held, Ph.D., P.E.**

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

13 **1.3 The Procter & Gamble Company and Benzophenone**

14 P&G manufactures, and/or distributes, and/or sells products that are labeled as having a Sun
15 Protection Factor Value¹ ("SPF Products"), including products that have as their primary function to
16 serve as sunscreens. One ingredient used in such products to enhance their ability to provide
17 protection from the sun is octocrylene, an active ingredient approved for use in sunscreens by the
18 Federal Food & Drug Administration ("FDA").² Octocrylene can at times contain benzophenone.
19 Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic
20 Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as
21 "Proposition 65") as a chemical "known to the state to cause cancer" as Proposition 65 defines that
22 phrase. 27 Cal. Code Reg. § 25000.

23 **1.4 Products Covered**

24 This Consent Judgment covers and applies to all SPF Products, including but not limited to
25 sunscreen and cream or moisturizers labeled as having a SPF, that are manufactured and/or
26 distributed for sale in California and/or sold in California by P&G. All sizes, types, brands,

27 _____
28 ¹ This term as used herein is defined at 21 C.F.R. § 352.3.

² See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 packaging, formulations, delivery forms (e.g., sprays or lotions applied by hand), intended uses
2 (e.g., “faces,” children’s products, “sport,” “moisturizing,” cosmetic purposes) are included, but not
3 limited to, *Olay Total Effects 7 in One Tone Correcting Moisturizer with Sunscreen Broad*
4 *Spectrum SPF 15 Light to Medium (Octocrylene 3%), #92373012, UPC #0 75609 19034 6*
5 (“Covered Products”). The Parties agree that the Notice to P&G covers all of P&G’s Covered
6 Products. This Consent Judgment, and all of its terms, applies to all Covered Products, including
7 without limitation new products and brands introduced, developed, or acquired in the future by
8 P&G which would today meet the definition of Covered Products if they currently were being
9 manufactured or distributed for sale, or being sold, in California. The term Covered Product, as
10 used hereafter in this Consent Judgment, includes such future products and brands.

11 **1.5 General Allegations**

12 Dr. Held alleges in the Complaint that P&G manufactured, and/or distributed for sale in
13 California, and/or sold in California, Covered Products containing benzophenone without “a clear
14 and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr. Held
15 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future
16 and to settle Dr. Held’s alleged claims.

17 **1.6 Notice of Violation**

18 On April 27, 2016, Dr. Held served P&G and the requisite public enforcement agencies with
19 a 60-Day Notice of Violation (“Notice”), alleging that P&G was in violation of Proposition 65 for
20 failing to warn consumers in California that its Sunscreens exposed users to benzophenone. To the
21 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
22 allegations set forth in any of the Notice.

23 **1.7 Complaint**

24 On April 24, 2017, Dr. Held filed a complaint in the Superior Court in and for the County of
25 Alameda against The Procter & Gamble Company and DOES 1-150, alleging violations of
26 California Health & Safety Code § 25249.6, based on exposures to benzophenone contained in
27 certain sunscreens sold by P&G in the State of California, *Held v. The Procter & Gamble Company,*
28 *et al.*, Case No.: CIV 1701429 (the “Complaint”).

1 **1.8 No Admission**

2 P&G denies all the respective material, factual, and legal allegations contained in the Notice
3 and Complaint. P&G maintains that all of its Covered Products have been and are in compliance
4 with all laws. Nothing in this Consent Judgment shall be construed as an admission against interest
5 by P&G of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
6 this Consent Judgment constitute or be construed as an admission against interest by P&G of any
7 fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish
8 or otherwise affect P&G's obligations, responsibilities, and duties under this Consent Judgment.

9 **1.9 Consent to Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over P&G as to the allegations in the Complaint, that venue is proper in the County of
12 Alameda, P&G agrees that it employs or has employed ten or more persons during time periods
13 relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce
14 the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
15 § 664.6.

16 **1.10 Effective Date**

17 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
18 this Consent Judgment is approved and entered by the Court, including any unopposed tentative
19 ruling.

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1 Reformulation Standards**

22 (a) On and after the Effective Date, P&G shall only manufacture or cause to be
23 manufactured, for sale in California, SPF Products that qualify as "Reformulated Covered
24 Products." For purposes of this Consent Judgment, "Reformulated Covered Products" are Covered
25 Products that either (i) contain no more than 20 parts per million ("ppm") benzophenone in the
26 finished Products, or (ii) contain no more than 200 ppm of benzophenone in the ingredient
27 octocrylene used in the finished Products ("Reformulation Standards"). It is understood and agreed
28 by the Parties that P&G is currently sourcing octocrylene (the chemical that in turn contains

1 benzophenone) with no more than 20 ppm benzophenone in the finished Products or 200 ppm of
2 benzophenone in the ingredient octocrylene used in the finished Products, thereby meeting the
3 Reformulation Standards above and shall continue to do so to the extent reasonably possible.
4 However, due to existing reformulation standards reached by Dr. Held with other manufacturers of
5 SPF products, Reformulated Covered Products may either (i) contain no more than 35 ppm
6 benzophenone in the finished Products, or (ii) contain no more than 350 ppm of benzophenone in
7 the ingredient octocrylene used in the finished Products (“35/350 Standard”). By complying with
8 the 35/350 Standard, P&G will continue to be in compliance with the Reformulation Standards and
9 with this Consent Judgment. No violation of this Consent Judgment can be deemed to occur by
10 virtue of compliance with the 35/350 Standard. Further, in the event that Dr. Held is a party to a
11 future court-approved consent judgment that establishes reformulation standards for benzophenone
12 in sunscreen, that are greater than the Reformulation Standards above, P&G shall have the option,
13 upon providing notice to Dr. Held, of complying with the revised benzophenone reformulation
14 standards.

15 (b) P&G, in complying with the Reformulation Standards may, at its option, either (i) test
16 the Reformulated Covered Product pursuant to a scientifically appropriate application of U.S.
17 Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically
18 appropriate methodology for determining the benzophenone or (ii) may use the appropriate
19 mathematical calculation based on octocrylene percentage in the Reformulated Covered Product
20 and the benzophenone concentration in the lot of octocrylene used in the Reformulated Covered
21 Product, based either on testing of the octocrylene lot or on a certificate of analysis (“Certificate of
22 Analysis”) documenting benzophenone content from the octocrylene supplier at the option of P&G.

23 **3. MONETARY PAYMENTS**

24 **3.1 Civil Penalty Payments** Pursuant to Health and Safety Code Section 25249.7(b)(2),
25 and in settlement of all claims alleged in the Notice or referred to in this Consent Judgment, P&G
26 agrees to pay \$17,000 in civil penalties. The penalty payment will be allocated in accordance with
27 California Health and Safety Code Section 25249.12(c)(1) & (d), with 75% of the penalty amount
28 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) by Dr.

1 Held. Dr. Held's counsel shall be responsible for remitting P&G's penalty payment under this
2 Consent Judgment to OEHHA. P&G shall issue two checks in the amount of \$4,250 written to
3 "Anthony E. Held, Client Trust Account," and a check in the amount of \$12,750 to "OEHHA,"
4 within ten 10 days of the Effective Date sent to the address provided in Section 3.3 below.

5 **3.2 Reimbursement of Attorneys' Fees and Costs**

6 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
9 other settlement terms had been finalized, P&G expressed a desire to resolve Dr. Held's fees and
10 costs. The Parties then negotiated a resolution of the compensation due to Dr. Held and his counsel
11 under general contract principles and the private attorney general doctrine codified at California
12 Code of Civil Procedure Section 1021.5. Within ten (10) days of the Effective Date, P&G shall
13 issue a check to "The Chanler Group" in the amount of \$31,500, and shall deliver it to the address
14 listed in Section 3.3 below. The check shall cover all fees and costs incurred by Dr. Held
15 investigating, bringing this matter to P&G's attention, and negotiating a settlement of the matter.

16 **3.3 Payment Address**

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

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

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final and binding resolution of all claims that were or could
24 have been asserted in the Complaint arising out of P&G's alleged failure to provide Proposition 65
25 warnings for exposures to benzophenone in their respective Covered Products. Dr. Held, acting on
26 his own behalf and in the public interest, releases P&G and its respective parents, subsidiaries,
27 affiliated entities under (full or partial) common ownership, manufacturers, suppliers and the
28 directors, officers, employees, attorneys, and predecessors, successors or assigns of each of them

1 (“Releasees”) and each entity to whom P&G directly or indirectly distributes or sells the Covered
2 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
3 franchisers, cooperative members, licensors and licensees, and including any and all subsidiaries,
4 parents, marketplace retailers and/or affiliates of the foregoing retailers including but not limited to
5 Ulta (collectively, the “Distribution Chain Releasees”) for violations arising under Proposition 65
6 for unwarned exposures to benzophenone from the Covered Products sold by P&G prior to the
7 Effective Date. Dr. Held’s release of claims applies to all Covered Products which P&G either
8 manufactured, and/or distributed and/or sold prior to the Effective Date, regardless of the date any
9 person distributes or sells the subject Covered Products.

10 Upon entry of this Consent Judgment by the Court, going forward, P&G’s compliance with
11 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
12 with respect to benzophenone in P&G’s prior, current and future Covered Products.

13 **4.2 Dr. Held’s Individual Release of Claims**

14 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
15 a release to P&G, Releasees, and Distribution Chain Releasees, which release shall be effective as a
16 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
17 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr. Held of any
18 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
19 alleged or actual exposures to benzophenone in P&G’s Covered Products prior to the Effective
20 Date.

21 **4.3 The Procter & Gamble Company’s Release of Dr. Held**

22 P&G, on behalf of itself, its past and current agents, representatives, attorneys, successors
23 and assignees, hereby waives any and all claims against Dr. Held and his attorneys and other
24 representatives, for any and all actions taken or statements made by Dr. Held and his attorneys and
25 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
26 Proposition 65 against it in this matter, or with respect to the Covered Products up through the
27 Effective Date.

28 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
7 Judgment is held by a court to be void or unenforceable, or any Parties agree to modify any terms
8 due to input from the Office of the Attorney General or after a hearing before the Court in
9 connection with Dr. Held's Motion to Approve, or for other good cause, each Party to be bound by
10 any such modified terms must re-execute the modified Consent Judgment and such modified
11 Consent Judgment then shall be presented to the Court for approval by Dr. Held; provided,
12 however, that if a provision of this Consent Judgment declared void or unenforceable is material to
13 the Party for whom such term provided a benefit or protection, that Party can seek other remedies,
14 including, without limitation, rescission or reformation, based on the provision being declared void
15 or unenforceable.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
19 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
20 limitation the delisting of benzophenone, then P&G may provide written notice to Dr. Held of any
21 asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further
22 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered
23 Products are so affected. None of the terms of this Consent Judgment shall have any application to
24 Covered Products sold outside of the State of California.

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notice required to be provided pursuant to
27 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class registered
28 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other at the

1 following addresses:

2 To P&G:

3 Elizabeth V. McNulty, Esq.
4 TAYLOR ANDERSON LLP
5 19100 Von Karman Ave Suite 820
Irvine, CA 92612

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

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

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

8 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
10 each of which shall be deemed an original, and all of which, when taken together, shall constitute
11 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

13 Dr. Held agrees to comply with the reporting form requirements referenced in California
14 Health & Safety Code § 25249.7(f).

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
17 Dr. Held is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
18 P&G agrees to urge the Court to approve this Consent Judgment. If any third party objection to the
19 noticed motion is filed, Dr. Held and P&G agree to work together to the extent appropriate, and
20 shall appear at any hearing before the Court to urge the Court to approve the Consent Judgment.

21 **12. MODIFICATION**

22 This Consent Judgment may only be modified by a written instrument executed by the Party
23 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion
24 to modify shall be served on all Parties and the Office of the Attorney General.

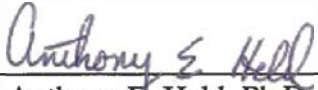
25 **13. AUTHORIZATION**

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

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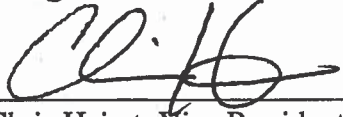
AGREED TO:

Date: 6/25/2017

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

AGREED TO:

Date: July 3, 2017

By: 
Chris Heiert, Vice President–Skin Care,
North America; Brand Franchise Leader,
Olay; and Global Commercial Leader,
Facial Moisturizers and Treatments