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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 MAPED HELIX USA, INC.; *et al.*,

17 Defendants.

Case No. CGC-18-564907

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 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 defendant Maped Helix USA, Inc. (Maped Helix), with Held and Maped Helix each
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer products.

10 **1.3 Defendant**

11 For purposes of this Consent Judgment only, Maped Helix does not dispute that it employs
12 ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.5 *et seq.*
14 (Proposition 65).

15 **1.4 General Allegations**

16 Held alleges that Maped Helix manufactures, imports, sells and/or distributes for sale in
17 California cutting mats containing di(2-ethylhexyl)phthalate (DEHP), and that it did so without
18 providing the health hazard warning that Held alleges is required by Proposition 65. DEHP is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
20 other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are cutting mats containing DEHP
23 including, but not limited to the *Helix Translucent Cutting Mat, #25018, UPC #0 79252 25018 1* that
24 are manufactured, imported, distributed, sold and/or offered for sale by Maped Helix in the State of
25 California, hereinafter the “Products.”

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1.6 Notice of Violation

On October 24, 2017, Held served Maped Helix and the requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Maped Helix violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.7 Complaint

On March 9, 2018, Held commenced the instant action (Complaint), naming Maped Helix as one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Maped Helix as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, 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 § 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is approved by the Court, including an unopposed tentative ruling.

1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, Maped Helix shall only
4 manufacture for sale, import for sale, and purchase for resale in California Products that are
5 Reformulated Products as defined by Section 2.2. Any Products, that are not Reformulated Products,
6 which Maped Helix sells, ships for sale, or distributes for sale to customers or consumers in
7 California, or to customers with nationwide distribution, after the Effective Date, shall be labeled
8 with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, Maped
9 Helix sells Products that are not Reformulated Products by mail order catalog or the internet to
10 customers located in California, Maped Helix shall also provide warnings for such Products by
11 identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6.

12 **2.2 Reformulation Standard**

13 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1
14 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory
15 accredited by the State of California, a federal agency, or a nationally recognized accrediting
16 organization. For purposes of compliance with this reformulation standard, testing samples shall be
17 prepared and extracted using Consumer Product Safety Commission (CPSC) methodology
18 CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA)
19 methodology 8270D, or other methodologies utilized by federal or state government agencies to
20 determine phthalate content in a solid substance.

21 **2.3 Clear and Reasonable Warnings**

22 Commencing on or before the Effective Date, Maped Helix shall provide clear and
23 reasonable warnings for all Products provided for sale to customers in California in accordance with
24 this Section pursuant to Title 27, California Code of Regulations, § 25600, *et seq.* Each warning
25 shall be prominently placed with such conspicuousness as compared with other words, statements,
26 designs, or devices as to render it likely to be read and understood by an ordinary individual under
27 customary conditions before purchase or use and shall be provided in a manner such that it is clearly
28 associated with the specific Product to which the warning applies.

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(a) **Warning.** The warning shall consist of the following statement (Warning):

⚠ WARNING: This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

At its sole option, Maped Helix may, but is not required to, include the bracketed text in the warning.

(b) **Short-Form Warning.** Maped Helix may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

⚠ WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

At its sole option, Maped Helix may, but is not required to, include the bracketed text in the warning.

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information, as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c), in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

Maped Helix shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. For the short-form warning, the entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information, as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c), on the product label. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

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2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, Maped Helix prints new catalogs and sells Products via mail order through such catalogs to end user customers located in California, Maped Helix shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information, as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c), provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, Maped Helix sells Products via the internet to end user customers located in California, Maped Helix shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. The Warning or a clearly marked hyperlink to the Warning using the word “WARNING” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The Warning, or the aforementioned hyperlink to the Warning, shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
4 in the Notice, Complaint, and this Consent Judgment, Maped Helix agrees to pay \$1,000 in civil
5 penalties. Maped Helix's civil penalty payment will be allocated according to Health and Safety
6 Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
7 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
8 percent (25%) of the penalty payment retained by Held. Maped Helix shall issue its payment in two
9 checks made payable to (a) "OEHHA" in the amount of \$750; and (b) "Anthony E. Held, Ph.D.,
10 P.E., Client Trust Account" in the amount of \$250. Held's counsel shall be responsible for
11 delivering OEHHA's portion of the penalty payment.

12 **3.2 Reimbursement of Attorneys' Fees and Costs**

13 The parties acknowledge that Held and his counsel offered to resolve this dispute without
14 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,
15 the Parties negotiated the compensation to be paid to Held and his counsel under general contract
16 principles and the private attorney general doctrine codified at California Code of Civil Procedure
17 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court
18 approval of the same, but exclusive of fees and costs on appeal, if any. Maped Helix agrees to pay
19 \$23,000 by a check made payable to "The Chanler Group" for all fees and costs incurred
20 investigating, bringing this matter to Maped Helix's attention, litigating, and negotiating a settlement
21 in the public interest.

22 **3.3 Payment Timing; Payments Held in Trust**

23 All payments due under this Consent Judgment shall be held in trust until the Court approves
24 the Parties' settlement. Maped Helix shall deliver its civil penalty and attorneys' fee reimbursement
25 payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully
26 executed by the Parties. Maped Helix's counsel shall provide Held's counsel with written
27 confirmation following its receipt of the settlement funds. Thereafter, Maped Helix's counsel shall
28 hold the settlement funds in trust until the Court grants the motion for approval of this Consent

1 Judgment contemplated by Section 5 and shall disburse the funds to Held's counsel within
2 five (5) days after the Effective Date.

3 **3.4 Payment Address**

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

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Held's Release of Proposition 65 Claims**

12 Held, acting on his own behalf and in the public interest, releases Maped Helix and its
13 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
14 attorneys (collectively, Releasees) and each person to whom Maped Helix directly or indirectly
15 distributes or sells the Products including, but not limited to, its downstream distributors,
16 wholesalers, customers, retailers, franchisers, cooperative members, marketplace hosts, licensors and
17 licensees (Downstream Releasees) for any violations arising under Proposition 65 for unwarned
18 exposures to DEHP from the Products manufactured, imported, distributed or sold by Maped Helix
19 prior to the Effective Date, as set forth in the Notice and Complaint. Compliance with the terms of
20 this Consent Judgment constitutes compliance with Proposition 65 by Maped Helix with respect to
21 the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or
22 distributed for sale by Maped Helix after the Effective Date.

23 **4.2 Held's Individual Release of Claims**

24 Held, in his individual capacity only and *not* in his representative capacity, on his own behalf
25 and on behalf of his past and current agents, representatives, attorneys, successors and/or assignees
26 also provides a release to Maped Helix, Releasees, and Downstream Releasees which shall be
27 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
28 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held
of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out
of alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by

1 Maped Helix before the Effective Date. Nothing in Section 4 affects Held's right to commence or
2 prosecute an action under Proposition 65 against a Releasee or Downstream Releasee that does not
3 involve Maped Helix's Products.

4 **4.3 Maped Helix's Release of Held**

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

11 **4.4 Section 1542 Waiver**

12 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
13 Code which provides as follows:

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

18 Each of the Parties waives and relinquishes any right or benefit it has or may have under
19 Section 1542 of California Civil Code or any similar provision under the statutory or non statutory
20 law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits
21 pertaining to the matters released in Sections 4.1, 4.2, and 4.3 hereinabove (the "Released Matters").
22 The Parties acknowledge that each may subsequently discover facts in addition to, or different from,
23 those that it believes to be true with respect to the claims released herein. The Parties agree that this
24 Consent Judgment and the releases contained herein shall be and remain effective in all respects
25 notwithstanding the discovery of such additional or different facts.

26 **5. COURT APPROVAL**

27 This Consent Judgment shall be null and void if, for any reason, it is not approved and
28 entered by the Court within one year after it has been fully executed by all Parties. Held and Maped

1 Helix agree to support the entry of this agreement as a judgment, and to obtain the Court's approval
2 of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health
3 and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent
4 Judgment, which motion Held shall draft and file. In furtherance of obtaining such approval, the
5 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of
6 this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner.
7 For purposes of this section, "best efforts" shall include, at a minimum, supporting the motion for
8 approval, responding to any objection that any third-party may file or lodge, and appearing at the
9 hearing before the Court if so requested.

10 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of California
16 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
17 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Maped
18 Helix may provide Held with written notice of any asserted change in the law, and shall have no
19 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
20 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
21 Maped Helix from its obligation to comply with any pertinent state or federal law or regulation. If
22 the Office of Environmental Health Hazard Assessment promulgates regulations pertaining to the
23 text and/or method of transmitting Proposition 65 warnings for consumer products, Maped Helix
24 may provide warnings for the Products in compliance with such regulations without being deemed to
25 be in breach of this Consent Judgment.

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notice required by this Consent Judgment
28 shall be in writing and sent by: (a) personal delivery, (b) first-class registered or certified mail, return

1 receipt requested; or (c) a recognized overnight courier to any Party by the other at the following
2 addresses:

3	To Maped Helix:	To Held:
4	Jacques LaCroix, President	Attn: Proposition 65 Coordinator
5	Maped Helix USA, Inc.	The Chanler Group
6	1200 North Arlington Heights Road,	2560 Ninth Street
	Suite 110	Parker Plaza, Suite 214
	Itasca, IL 60143	Berkeley, CA 94710-2565

7 With a Copy To:
8 Ann Grimaldi, Esq.
9 Grimaldi Law Offices
10 535 Mission Street, 14th Floor
San Francisco, CA 94105

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

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Held and his counsel agree to comply with the reporting form requirements referenced in
19 California Health and Safety Code § 25249.7(f).

20 **11. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
24 therein. There are no warranties, representations, or other agreements between the Parties except as
25 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
26 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
27 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
28 exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

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

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 agreed to all of the terms and conditions of this
8 Consent Judgment.

10 **AGREED TO:**

11 Date: 12/7/2018

12
13 By: Anthony E. Held
14 Anthony E. Held, Ph.D., P.E.

AGREED TO:

11 Date: 12-11-2018

12
13 By: James M. Tims
14 James Michael Tims
15 Maped-Helix USA Country Manager
16 Maped Helix USA, Inc.



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