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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

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

14 Plaintiff,

15 v.

16 ROOT-LOWELL MANUFACTURING
17 CO.; and DOES 1-150, inclusive,

18 Defendants.

Case No. CIV-1800295

[PROPOSED] 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.,
4 P.E. (“Dr. Held”) and defendant Root-Lowell Manufacturing Co. (“Root-Lowell”), with Dr. Held
5 and Root-Lowell each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Root-Lowell employs ten or more persons and is a person in the course of doing business
12 for 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 Root-Lowell manufactures, imports, sells and/or distributes for sale in
16 California, products containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 providing the health hazard warning that Dr. Held alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC sprayer hoses containing
20 DEHP including, but not limited to, *Flo-Master Multi Purpose Sprayer, Model 1401, UPC #0*
21 *26156 91140 3*, that are manufactured, imported, distributed, sold and/or offered for sale in
22 California by Root-Lowell (“Products”).

23 **1.6 Notice of Violation**

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

1 **1.7 Complaint**

2 On January 25, 2018, Dr. Held commenced the instant action (the “Complaint”), naming
3 Root-Lowell as one of the defendants for the alleged violations of Proposition 65 that are the
4 subject of the Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Root-Lowell as to the allegations contained in the Complaint, that venue is proper
17 in the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of
18 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
21 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23 **2.1 Reformulation Standards**

24 As of the Effective Date, Root-Lowell shall not distribute for sale in California, sell or offer
25 for sale the Products in California unless (a) the Product contains no more than 1,000 parts per
26 million (0.1%) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing
27 methodologies 3580A and 8270C or other methodology utilized by federal or state government
28 agencies for the purpose of determining DEHP content in a solid substance (“Reformulated

1 Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable
2 warning as described below in Section 2.2.

3 The requirements in Section 2 shall not apply to any Product that, as of the Effective Date,
4 is in the stream of commerce or is part of Root-Lowell’s inventory stock. Products sold by Root-
5 Lowell prior to the Effective Date will not be subject to enforcement under this Agreement.


6 **2.2 Product Warnings**

7 Commencing no later than the Effective Date, Root-Lowell shall provide clear and
8 reasonable warnings for all Products as set forth in subsections 2.2(a) and (b) for all Products that
9 do not qualify as Reformulated Products.

10 **(a) Retail Store Sales.**

11 **(i) Product Labeling.** Root-Lowell shall affix a warning to the packaging,
12 labeling, or directly on each Product provided for sale in retail outlets in California that states:

13 For warnings affixed on packaging or labels of a product, Root-Lowell shall use the
14 following warning:

15  **WARNING:** This product can expose you to chemicals, including [other
16 chemical(s)and/or] Di(2-ethylhexyl)phthalate (DEHP),
17 which are chemicals known to the State of California to
18 cause cancer and birth defects or other reproductive harm.
19 For more information go to www.P65Warnings.ca.gov.
Wash your hands after handling this product.


20 For warnings affixed directly on the product, Root-Lowell shall use the
21 following warning:

22  **WARNING:** Cancer and Reproductive Harm--
23 www.P65Warnings.ca.gov.


24 **(b) Mail Order Catalog and Internet Sales.** In the event that Root-Lowell sells
25 Products via mail order catalog and/or the internet, to customers located in California, after the
26 Effective Date, that are not Reformulated Products, Root-Lowell shall provide warnings for such
27 Products sold via mail order catalog or the internet to California residents. Warnings given in the
28

1 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
2 as further specified in Sections 2.2(b)(i) and (ii).

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
4 catalog shall be in the same type size or larger than the Product description text within the catalog.
5 The following warning shall be provided on the same page and in the same location as the display
6 and/or description of the Product:

7  **WARNING:** This product can expose you to chemicals, including [other
8 chemical(s) and/or] Di(2-ethylhexyl)phthalate (DEHP),
9 which are chemicals known to the State of California to
10 cause cancer and birth defects or other reproductive harm.
11 For more information go to www.P65Warnings.ca.gov.
12 *Wash your hands after handling this product.*


13 Where it is impracticable to provide the warning on the same page and in the same location
14 as the display and/or description of the Product, Root-Lowell may utilize a designated symbol to
15 cross reference the applicable warning and shall define the term “designated symbol” with the
16 following language on the inside of the front cover of the catalog or on the same page as any order
17 form for the Product(s):

18  **WARNING:** Certain products identified with this symbol ▼ and offered
19 for sale in this catalog can expose you to chemicals,
20 including [other chemical(s) and/or] Di(2-
21 ethylhexyl)phthalate (DEHP), which are chemicals known
22 to the State of California to cause cancer and birth defects
23 or other reproductive harm. For more information go to
24 www.P65Warnings.ca.gov. *Wash your hands after*
25 *handling this product.*


26 The designated symbol must appear on the same page and in close proximity to the display
27 and/or description of the Product. On each page where the designated symbol appears, Root-
28 Lowell must provide a header or footer directing the consumer to the warning language and
definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with
the sale of the Products via the internet, which warning shall appear either: (a) on the same web


1 page on which a Product is displayed; (b) on the same web page as the order form for a Product;
2 (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a
3 purchaser during the checkout process. The following warning statement shall be used and shall
4 appear in any of the above instances adjacent to or immediately following the display, description,
5 or price of the Product for which it is given in the same type size or larger than the Product
6 description text:

7  **WARNING:** This product can expose you to chemicals, including [other
8 chemical(s) and/or] Di(2-ethylhexyl)phthalate (DEHP),
9 which are chemicals known to the State of California to
10 cause cancer and birth defects or other reproductive harm.
11 For more information go to www.P65Warnings.ca.gov.
Wash your hands after handling this product.

12 Alternatively, where it is impracticable to provide the warning on the same page and in the
13 same location as the display and/or description of the Product, Root-Lowell may utilize a
14 designated symbol to cross reference the applicable warning with a “designated symbol” which
15 may appear adjacent to or immediately following the display, description, or price of the Product
16 for which a warning is being given, provided that the following warning statement also appears
17 elsewhere on the same web page, as follows:

18  **WARNING:** Certain products identified with this symbol ▼ and offered
19 for sale in this website can expose you to chemicals,
20 including [other chemical(s) and/or] Di(2-
21 ethylhexyl)phthalate (DEHP), which are chemicals known
22 to the State of California to cause cancer and birth defects
23 or other reproductive harm. For more information go to
www.P65Warnings.ca.gov. *Wash your hands after
handling this product.*

24 2.2.1 Warning Symbol

25 In regards to the following symbol: , if it is not printed using the color yellow, the
26 symbol may be printed in black and white. The symbol shall be placed to the left of the text of the
27 warning, in a size no smaller than the height of the word “WARNING”.

28

1 **2.3 Modifications to Proposition 65**

2 **2.3.1**

3 If Proposition 65 is modified or amended after the Effective Date and the warning
4 requirements differ from those set forth above, Root-Lowell may modify the content and/or
5 language of the warnings so as to comply with the requirements of Proposition 65. Any
6 modifications to the content and/or language of the warnings pursuant to Proposition 65 or other
7 regulations will be deemed in compliance with this Agreement.

8 **2.3.2**

9 Root-Lowell shall have the ability and discretion to modify the chemical(s) listed in the
10 warning labels listed in Section 2.2 based on changes that may be made to the composition of the
11 product formula.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

14 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
15 claims referred to in this Consent Judgment, Root-Lowell shall pay a total of \$11,000 in civil
16 penalties in accordance with this Section. The penalty payment will be allocated in accordance
17 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to
18 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
19 25% of the penalty remitted to Dr. Held, as follows: Root-Lowell shall issue two (2) checks for the
20 civil penalty: (1) a check made payable to the “Office of Environmental Health Hazard
21 Assessment” or “OEHHA” in the amount of \$8,250; and (2) a check made payable to “Anthony E.
22 Held, Client Trust Account,” in the amount of \$2,750. Root-Lowell shall remit the payments
23 within five (5) business days of the Effective Date to Dr. Held’s counsel and Dr. Held’s counsel
24 will then ensure payment to OEHHA. All penalty payments shall be delivered to the addresses
25 listed in Section 3.3 below.

26 **3.2 Reimbursement of Attorneys’ Fees and Costs**

27 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving

1 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
2 the other settlement terms had been finalized, Root-Lowell expressed a desire to resolve Dr. Held's
3 fees and costs. The Parties then negotiated a resolution of the compensation due to Dr. Held and
4 his counsel under general contract principles and the private attorney general doctrine codified at
5 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
6 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
7 on appeal, if any, Root-Lowell shall reimburse Dr. Held and his counsel \$30,000. Accordingly,
8 Root-Lowell shall issue a check made payable to "The Chanler Group," in the amount of \$30,000.
9 Root-Lowell shall remit the payment within five (5) business days of the Effective date to the
10 address listed in Section 3.3 below. The reimbursement shall cover all fees and costs incurred by
11 Dr. Held investigating, bringing this matter to Root-Lowell's attention, litigating, and negotiating a
12 settlement of the matter in the public interest.

13 **3.3 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

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Dr. Held's Release of Proposition 65 Claims**

21 Dr. Held, acting on his own behalf and in the public interest, releases Root-Lowell and its
22 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
23 and attorneys ("Releasees") and each entity to whom Root-Lowell directly or indirectly distributes
24 or sells the Products including, but not limited to, Wal-Mart Stores, Inc., its downstream
25 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
26 licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned
27 exposures to DEHP from the Products manufactured, imported, distributed or sold by Root-Lowell
28 prior to the Effective Date, as set forth in the Notice.

1 **4.2 Dr. Held's Individual Release of Claims**

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

9 **4.3 Root-Lowell's Release of Dr. Held**

10 Root-Lowell, on its own behalf and on behalf of its past and current agents, representatives,
11 attorneys, successors and/or assignees, hereby waives any and all claims against Dr. Held and his
12 attorneys and other representatives, for any and all actions taken or statements made (or those that
13 could have been taken or made) by Dr. Held and his attorneys and other representatives in the
14 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
15 respect to the Products.

16 **5. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
19 after it has been fully executed by all Parties. Dr. Held and Root-Lowell agree to support the entry
20 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
21 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
22 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
23 motion Dr. Held shall draft and file and Root-Lowell shall support, appearing at the hearing if so
24 requested. If any third-party objection to the motion is filed, Dr. Held and Root-Lowell agree to
25 work together to file a reply and appear at any hearing. This provision is a material component of
26 the Consent Judgment and shall be treated as such in the event of a breach.

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Root-
9 Lowell may provide Dr. Held with written notice of any asserted change in the law, and shall have
10 no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
11 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Root-
12 Lowell from its obligation to comply with any pertinent state or federal law or regulation.

13 **8. NOTICE**

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

18 To Root-Lowell:

19 Sally Hosn, Esq.
20 Yang | Professional Law Corporation
21 80 South Lake Avenue, Suite 820
22 Pasadena, CA 91101

To Dr. Held:

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

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

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

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Dr. Held and his counsel agree to comply with the reporting form requirements referenced
3 in California Health and Safety Code section 25249.7(f).

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

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

12
13 **AGREED TO:**

14 Anthony E. Held
15 ANTHONY E. HELD, PH.D., P.E.
16

17 Dated: 7/2/2018

AGREED TO:

Marvin E. Lahey
ROOT-LOWELL MANUFACTURING CO.

By: MARVIN E. LAHEY
(Print Name)

Its: CONTROLLER
(Title)

Dated: 7/2/18

18
19
20
21
22 **IT IS SO ORDERED:**

23
24
25 Dated: _____

JUDGE OF THE SUPERIOR COURT

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