

1 Laralei Paras, Sate Bar No. 203319
2 Kimberly Gates, State Bar No. 282369
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 Email: kimberly@chanler.com
10 Email: laralei@chanler.com

11 Attorneys for Plaintiff
12 ANTHONY E. HELD, PH.D., P.E.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

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

19 Plaintiff,

20 v.

21 RADIANS, INC.; *et al.*,

22 Defendants.

Case No. CGC-18-566818

[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.,
4 P.E. (“Held”) and Radians, Inc. (“Radians”), with Held and Radians each individually referred to
5 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
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Radians**

11 Radians employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Radians manufactures, imports, distributes, sells, and/or offers for sale in
16 California gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”),
17 and that it does so without first providing the health hazard warning required by Proposition 65.
18 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other
19 reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, the products covered by this agreement are defined
22 as gloves with vinyl/PVC components containing DEHP that are manufactured, imported,
23 distributed, sold, and/or offered for sale in California by Radians, including, but not limited to the
24 *DeWalt All Purpose Synthetic Utility Glove, DPG200L, UPC #6 74326 23256 0*, hereinafter the
25 “Products.”

26 **1.6 Notice of Violation**

27 On December 13, 2017, Held served Radians and the requisite public enforcement
28 agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice

1 that Radians was in violation of Proposition 65 for failing to warn its customers and consumers in
2 California of the health hazards associated with exposures to DEHP from the Products. To the
3 best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an
4 action to enforce the violations alleged in the Notices.

5 **1.7 Complaint**

6 On May 29, 2018, Held filed the instant action, ("Complaint"), naming Radians as a
7 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
8 Notice.

9 **1.8 No Admission**

10 Radians denies the material, factual, and legal allegations contained in the Notice and
11 Complaint and maintains that all of the products it 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,
14 or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
15 an admission of any fact, finding, conclusion of law, issue of law, or violation of law, such being
16 specifically denied by Radians. This Section shall not, however, diminish or otherwise affect
17 Radians' obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
25 which the Motion for Approval of the Consent Judgment is granted by the Court.
26
27
28

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

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

3 Commencing on the Effective Date and continuing thereafter, Radians agrees to only
4 manufacture, import, distribute, sell or offer for sale, in the State of California, Products that are
5 either: (a) Reformulated Products, as defined in Section 2.2; or (b) Products bearing a clear and
6 reasonable health hazard warning, as detailed in Sections 2.3 and 2.4, below.


7 **2.2 Reformulated Products Defined**


8 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products
9 containing DEHP in concentrations of less than 1,000 parts per million (0.1%) in each accessible
10 component (i.e., any component that may be touched during a reasonably foreseeable use) when
11 analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
12 recognized accrediting organization. For purposes of compliance with this reformulation standard,
13 testing samples shall be prepared and extracted using Consumer Product Safety Commission
14 (“CPSC”) methodology CPSC-CH-C1001.09.1 and analyzed using U.S. Environmental Protection
15 Agency (“EPA”) methodology 8270D, or other methodologies utilized by federal or state
16 government agencies to determine phthalate content in a solid substance.

17 **2.3 Clear and Reasonable Warnings**

18 Commencing on the Effective Date and continuing thereafter, Radians shall provide clear
19 and reasonable warnings as set forth in this Section for all Products manufactured, imported,
20 distributed, sold or offered for sale, in California, that do not qualify as Reformulated Products.
21 Each warning shall be prominently placed with such conspicuousness as compared with other
22 words, statements, designs, or devices as to render it likely to be read and understood by an
23 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
24 provided in a manner such that the consumer or user understands to which *specific* Product the
25 warning applies, so as to minimize the risk of consumer confusion. For purposes of this Consent
26 Judgment, a clear and reasonable warning displayed or transmitted according the above criteria,
27 and containing one of the following statements, shall satisfy these requirements:


28 For Products:

1  **WARNING:** This product can expose you to chemicals, including
2 DEHP, which is known to the State of California to cause
3 information go to www.P65Warnings.ca.gov

4  **WARNING:** This product can expose you to chemicals, including
5 DEHP, which is known to the State of California to cause
6 cancer and birth defects or other reproductive harm. For
7 more information go to www.P65Warnings.ca.gov

8 Or, if placed directly on a Product or the Product's packaging and/or labeling, Radians may use
9 one of the following short-form warning statements, provided it appears in a type size no smaller
10 than the largest type size used for other consumer information on the Product's label and in no
11 case smaller than 6-point type:

12  **WARNING:** Reproductive Harm -
13 www.P65Warnings.ca.gov

14  **WARNING:** Cancer and Reproductive Harm -
15 www.P65Warnings.ca.gov

16 **2.4 Internet and Catalogue Product Warnings**

17 In the event Radians sells Products that do not qualify as Reformulated Products via the
18 internet to customers located in California, the warning requirements of this Section shall be
19 satisfied if, prior to purchase: (a) one of the foregoing warnings, described in Section 2.3, appears
20 on the same page, in the same type size or larger than the Product description text, as the Product;
21 (b) a warning appears on the same web page as the price for the Product, in the same type size or
22 larger than the Product description text; (c) a warning appears on one or more web pages displayed
23 to the consumer prior to purchase, in the same type size or larger than the Product description text;
24 or (d) a hyperlink, clearly marked "WARNING," appears on the Product display page, in type
25 large enough so that the consumer does not have to search for it in the general content, and a
26 prominently placed warning appears elsewhere, such as on the Product description page, in a
27 manner that clearly associates it with the Product to which the warning applies, prior to checkout
28 or purchase. If the short-form warning is being provided on the Product's label, then the warning
provided on the website may utilize the same content.

1 For mail order catalogue sales to consumers located in California, the above warning
2 requirements shall be met, if, in addition to complying with the factors listed above, the catalog
3 warning also clearly associates the warning with the item being purchased. If the short-form
4 warning it utilized on the Product labeling, the warning provided in the catalog may use the
5 content as the on-product warning.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all claims alleged
9 in the Notice, Radians agrees to pay a total of \$40,000 in civil penalties. Each penalty payment
10 will be allocated in accordance with Health and Safety Code §25249.12(c)(1) & (d), with 75% of
11 the penalty amount remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) and the remaining 25% of the penalty amount retained by Held, as set forth in
13 Sections 3.1.1 and 3.1.2 below. Held’s counsel shall be responsible for delivering OEHHA’s
14 portion of the penalty payments made under this Settlement Agreement.

15 **3.1.1 Initial Civil Penalty Payment.**

16 Within five (5) days of the Effective Date, Radians shall pay an initial civil penalty
17 in the amount of \$15,000. The initial civil penalty due under this Section shall be in the form of
18 two separate checks, made payable as follows: (a) a check payable to “OEHHA” in the amount of
19 \$11,250; and (b) a check payable to “Anthony Held, Client Trust Account”, in the amount of
20 \$3,750.

21 **3.1.2 Final Civil Penalty Payment.**

22 Radians shall pay a final civil penalty of \$25,000. However, the final civil penalty
23 shall be waived in its entirety, if, on or before the May 1, 2019, an officer of Radians certifies that,
24 as of May 1, 2019, all Products Radians distributes, ships, sells or offers for sale in or into
25 California, including Products sold to retailers or distributors located outside of California but who
26 sell Radians’ products to consumers located within the State, are Reformulated Products, as
27 defined by Section 2.2, and that Radians will continue to distribute, ship, sell or offer for sale only
28 Reformulated Products in the future. The option to certify to product reformulation in lieu of

1 making the final civil penalty payment required by this Section is a material term, and time is of
2 the essence. Unless waived, on or before May 1, 2019, Radians shall provide its final civil penalty
3 payment as follows: (i) a check in the amount of \$18,750 payable to "OEHHA" and (ii) a check in
4 the amount of \$6,250 payable to "Anthony Held, Client Trust Account."

5 **3.2 Reimbursement of Attorney's Fees and Costs**

6 The parties acknowledge that Held and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
8 of fees to be resolved after the material terms of this Consent Judgment were settled. After the
9 Parties reached an agreement as to all other settlement terms, the Parties then reached an accord on
10 the compensation due to Held and his counsel, under general contract principles and the private
11 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
12 performed through the mutual execution of this Consent Judgment. Under these legal principles,
13 within five days of the Effective Date, Radians agrees to pay \$30,000 to Held and his counsel for
14 all fees and costs incurred in investigating, bringing this matter to the attention of Radians'
15 management, and negotiating a settlement in the public interest. Radians' payment shall be
16 delivered in the form of a check payable to "The Chanler Group."

17 **3.3 Payment Timing; Payments Held in Trust**

18 All payments due under this Consent Judgment shall be held in trust until such time as the
19 Court approves the Parties' settlement. With five (5) business days of the mutual execution of
20 this Consent Judgment, all payments required by this agreement shall be delivered to and held in
21 trust by Radians' counsel, Paul Billings Law, until the Court grants the motion for approval of
22 this Consent Judgment, as contemplated by Section 5. Radians' counsel shall provide written
23 confirmation to Held's counsel that it is holding Radians' payments in trust. Within five (5) days
24 of the Effective Date, Radians' counsel shall deliver all payments due under this agreement to
25 Held's counsel.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.4 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Public Release of Proposition 65 Claims

Held, acting on his own behalf and in the public interest, releases Radians and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees"), and each entity to whom Radians directly or indirectly distributes or sells the Products, including, without limitation, its downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees"), for any violation arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed for sale by Radians prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from Products sold or distributed for sale by Radians after the Effective Date. The Parties agree and acknowledge that the releases provided under this Consent Judgment shall not extend upstream to any entity that manufactured the Products, or any components part thereof, or to any entity that distributed or sold the Products, or any component parts thereof, to Radians.

4.2 Held's Individual Release of Claims

Held, in his individual capacity only and *not* in his representative capacity, also provides a release to Radians, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, 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 sold or distributed for sale by Radians prior to the Effective Date.

1 **4.3 Radians' Release of Held**

2 Radians, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
4 attorneys and other representatives, for any and all actions taken or statements made by Held and
5 his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court, and it
9 shall be null and void if it is not approved and entered by the Court within one year after it has
10 been fully executed by the Parties, or within such additional time as the Parties may agree to in
11 writing.

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of
18 California and apply within the state of California. In the event that Proposition 65 is repealed or
19 is otherwise rendered inapplicable, by reason of law generally or as to the Products, then Radians
20 may provide written notice to Held of any asserted change in the law, and shall have no further
21 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
22 Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
27
28

1 For Radians:

2 Mike Tutor, CEO
3 Radians, Inc.
4 5305 Distriplex Farms Drive
5 Memphis, TN 38141

6 with a copy to Radians' counsel:

7 Paul Billings, Counsel
8 Paul Billings Law
9 5305 Distriplex Farms Drive
10 Memphis, TN 38141

11 For Held:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST-EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

AGREED TO:

9
10 Date: 10/22/18 _____

Date: 10/18/18 _____

11 By: Anthony E. Held
12 ANTHONY E. HELD, PH.D., P.E.

By: Mike Tutor
Mike Tutor, CEO
RADIANS, INC.