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5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PH.D., P.E.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR SANTA CLARA COUNTY
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 JORDAN INDUSTRIES, INC.; *et al.*,

16 Defendants.
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Case No. 18CV321719

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT DEFLECTO, LLC**

(Health & Safety Code § 25249.5 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”), and defendant Deflecto, LLC (“Deflecto”) with Held and Deflecto each individually
5 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 Deflecto employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Deflecto sells and distributes for sale in California, vinyl/PVC suction cups
16 that contain and expose individuals to di(2-ethylhexyl) phthalate (“DEHP”), and that it does so
17 without first providing a warning in violation of Health and Safety Code section 25249.6. DEHP is
18 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
19 or other reproductive harm.

20 **1.5 Covered Products Defined**

21 For purposes of this Consent Judgment, “Covered Products” are defined as: (i) vinyl/PVC
22 suction cups containing DEHP including, but not limited to, the *Deflect-O Suction Cups with Hook*,
23 *#20011RT*, *UPC #0 79916 01381 7*; (ii) vinyl/PVC brochure holders containing DEHP including, but
24 not limited to, Item No. 51601; UPC 079916516011 (*Foldem-Up® Literature Holder*, 6/pk); (iii)
25 vinyl/PVC sign holder grips containing DEHP including, but not limited to, Item No. 20008CR; UPC
26 079916017013 (*10pc Versagrip Dbl Clip10/20pk*); (iv) vinyl/PVC pouches containing DEHP
27 including, but not limited to, Item No. 20019; UPC 079916015910 (*10pc Flexible Pouch 10 Pk*), (v)
28 vinyl/PVC magnetic sheet and vent covers containing DEHP including, but not limited to, Item No.

1 5901-10; UPC 079916017426 (10pc Craft Magnetic Sheet 1 Pk), and (vi) vinyl/PVC hoses
2 containing DEHP including, but not limited to, Item No. SWR320; UPC 079916416021 (Sewer Hose
3 3"X 20' Blue), that are sold, manufactured for sale or promotion, distributed for sale or promotion, or
4 offered for sale or promotion in California by Deflecto.

5 **1.6 Notices of Violation**

6 On October 24, 2017, Held served Deflecto, the California Attorney General, and all other
7 requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that
8 Deflecto violated Proposition 65 failing to warn its customers and consumers in California of the
9 health risks associated with exposures to DEHP from Deflecto’s suction cup products.

10 On September 26, 2018, Held served Deflecto, the California Attorney General, and all other
11 requisite public enforcers with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”).
12 The Supplemental Notice alleges that Deflecto violated Proposition 65 failing to warn its customers
13 and consumers in California of the health risks associated with exposures to DEHP from the Covered
14 Products.

15 The Notice and Supplemental Notice are referred to collectively as the “Notices.” No public
16 enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in
17 either of the Notices.

18 **1.7 Complaint**

19 On February 2, 2018, Held filed the instant action (“Complaint”), naming Deflecto as a
20 defendant for the alleged violations that are the subject of the Notice. Upon the date that is 61 days
21 after the date of service of the Supplemental Notice, or the Court’s entry of this Consent Judgment as
22 a judgment, whichever is later, the Parties stipulate and agree that the Complaint shall be deemed
23 amended *nunc pro tunc* to include all Covered Products and all claims and allegations that are the
24 subject of the Notices. The Parties further stipulate and agree that the Court has authority to take this
25 action based on the Supplemental Notice.

26 **1.8 No Admission**

27 Deflecto denies the material, factual, and legal allegations contained in the Notices and
28 Complaint, and maintains that all the products that it has sold or distributed for sale or promotion in

1 California, including the Covered Products, have been and are in compliance with all laws. Nothing
2 in this Consent Judgment shall be construed as an admission by Deflecto of any fact, finding,
3 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
4 constitute or be construed as an admission by Deflecto of any fact, finding, conclusion of law, issue
5 of law, or violation of law. This Section shall not, however, diminish or otherwise affect Deflecto's
6 obligations, responsibilities, and duties under this Consent Judgment.

7 **1.9 Jurisdiction**

8 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
9 jurisdiction over Deflecto as to the allegations in the Complaint, that venue is proper in Santa Clara
10 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
11 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

12 **1.10 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
14 Plaintiff provides written notification of the Court's approval of the Consent Judgment contemplated
15 by Section 5.

16 **2. INJUNCTIVE RELIEF: REFORMULATION**

17 **2.1 Commitment to Reformulate Products or Provide Warnings**


18 Commencing on the Effective Date, and continuing thereafter, Deflecto agrees to only
19 manufacture, import, or purchase, for sale or promotion in or into California, either (a)
20 "Reformulated Products," as defined by Section 2.2, or (b) Covered Products that contain a clear and
21 reasonable warning pursuant to Section 2.3.

22 **2.2 Reformulated Products Defined**

23 For purposes of this Consent Judgment, Reformulated Products are defined as Covered
24 Products that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) in
25 any accessible component (i.e., any component that may be touched during a reasonably foreseeable
26 use), when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
27 3580A and 8270C, or equivalent methods used by state or federal agencies to determine or measure
28 DEHP content in a solid substance.

1 **2.3 Clear and Reasonable Warnings**

2 Deflecto agrees that as of the Effective Date, all Covered Products it manufactures, imports,
3 or purchases, for sale or promotion, in or into California, which do not qualify as Reformulated
4 Products (as defined in Section 2.2 above), will bear a clear and reasonable warning in accordance
5 with this Section 2.3, or Title 27 California Code of Regulations section 25601, *et seq.* Deflecto
6 further agrees that any warning used will be prominently placed in relation to the Covered Products
7 with such conspicuousness when compared with other words, statements, designs, or devices as to
8 render it likely to be read and understood by an ordinary individual under customary conditions of
9 purchase or use. For purposes of this Consent Judgment, warning content permitted by Section
10 25603, including but not limited to the following statement, displayed or transmitted according to the
11 above criteria and affixed directly to a Covered Product or its accompanying labeling or packaging,
12 shall be deemed clear and reasonable:

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

16 If Deflecto sells non-reformulated Covered Products via an internet website to customers in
17 California, the warning requirements of this Section shall be satisfied if the foregoing warning
18 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
19 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed
20 to a purchaser during the checkout process. Alternatively, a symbol consisting of a black
21 exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately
22 following the display, description, price, or checkout listing of the Covered Product, provided that the
23 warning statement also appears elsewhere on the same web page in a manner that clearly associates it
24 with all product(s) to which the warning applies.

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Civil Penalty Payment**

27 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
28 to in the Notices, the Complaint and this Consent Judgment, Deflecto shall pay \$12,000 in civil

1 penalties. Deflecto’s civil penalty payment shall be allocated according to Health and Safety Code
2 section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California
3 Office of Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of
4 the funds remitted to Held. Deflecto shall provide its payment in two checks for the following
5 amounts made payable to: (a) “OEHHA” in the amount of \$9,000; and (b) “Anthony E. Held, Client
6 Trust Account” in the amount of \$3,000. Held’s counsel shall be responsible for delivering the
7 penalty payment to OEHHA.

8 **3.2 Representations**

9 Deflecto represents that the sales data and other information concerning the Products,
10 knowledge of DEHP, prior reformulation and/or warning efforts, provided to Held in negotiating this
11 Consent Judgment was truthful to its knowledge at the time of execution of this Consent Judgment
12 and a material factor upon which Held relied to determine the amount of civil penalties assessed
13 pursuant to Health & Safety Code § 25249.7.

14 **3.3 Reimbursement of Attorney’s Fees and Costs**

15 The parties acknowledge that Held and his counsel offered to resolve this dispute without
16 reaching terms on the fees and costs to be reimbursed, thereby leaving the issue to be resolved after
17 the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms
18 had been finalized, the Parties negotiated a reimbursement of the compensation due to Held and his
19 counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
21 execution of this Consent Judgment. Accordingly, Deflecto agrees to pay \$30,000 for all fees and
22 costs incurred by Held investigating, bringing this matter to Deflecto’s attention, litigating and
23 negotiating a settlement in the public interest, and obtaining court approval of the same.

24 **3.4 Payment Timing; Penalty for Late Payments**

25 All payments due under this Consent Judgment shall be delivered to Held’s counsel within
26 five (5) days after the Effective Date. Deflecto agrees and represents that should any settlement
27 payment required by this Consent Judgment not be received by Held’s counsel within ten (10) days
28 after the Effective Date, (a) Deflecto shall be liable to Held for an additional 10% late payment

1 penalty for all unpaid or untimely amount(s); (b) Held may seek to enforce Deflecto’s payment
2 obligations under general contract principles and Code of Civil Procedure section 664.6; and (c) Held
3 shall be entitled to the reasonable fees incurred recovering any unpaid or untimely settlement
4 payments pursuant to general contract principles and Code of Civil Procedure section 1021.5.

5 **3.5 Payment Address**

6 All payments under this Consent Judgment shall be delivered to:

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

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Held’s Public Release of Proposition 65 Claims**

14 Held, acting on his own behalf and on behalf of his past and current agents, representatives,
15 attorneys, successors, and assignees, and in the public interest, releases Deflecto and its parents and
16 its current and former corporate affiliates (including, without limitation, Jordan Industries, Inc. and
17 Jordan Specialty Plastics, Inc.), subsidiaries, affiliated entities under common ownership, directors,
18 officers, employees, shareholders and attorneys (“Releasees”), and each entity to whom Deflecto
19 directly or indirectly distributes or sells the Covered Products including, but not limited to, its
20 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
21 licensors and licensees (“Downstream Releasees”) for any violation arising under Proposition 65
22 based on a failure to warn about exposures to DEHP in Covered Products sold, or manufactured,
23 imported, distributed, or purchased, for sale or promotion by Deflecto prior to the Effective Date.
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
25 with respect to the alleged or actual failure to warn about exposures to DEHP in Covered Products
26 manufactured, imported, sold, or distributed, for sale or promotion by Deflecto after the Effective
27 Date.

28 **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 Deflecto, Releasees, and Downstream Releasees which shall be effective as a full and final

1 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character or kind,
3 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
4 DEHP in Covered Products sold, or manufactured, imported, distributed, or purchased, for sale or
5 promotion by Deflecto before the Effective Date.

6 **4.3 Deflecto's Release of Held**

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

12 **5. COURT APPROVAL**

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

16 **6. ENFORCEMENT OF CONSENT JUDGMENT**

17 Only the Parties may enforce this Consent Judgment. In any action to enforce the terms or
18 conditions of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys'
19 fees and costs.

20 **7. DISMISSAL OF OTHER NAMED DEFENDANTS**

21 Held agrees that within 15 days of the Effective Date or his counsel's receipt of the settlement
22 payments required by Section 3, whichever is later, he will file a request for dismissal with prejudice
23 as to defendants Jordan Industries, Inc. and Jordan Specialty Plastics, Inc.

24 **8. SEVERABILITY**

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

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1 **9. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. If Proposition 65 is repealed, preempted, or otherwise
4 rendered inapplicable by reason of law generally, or as to the Covered Products, then Deflecto may
5 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered
7 Products are so affected.

8 **10. NOTICE**

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

12 For Deflecto:

13 Paul Thompson, Chief Executive Officer
14 Deflecto, LLC
15 7035 East 86th Street
16 Indianapolis, IN 46250

17 Gary M. Roberts, Esq.
18 Sarah Ratcliffe Choi, Esq.
19 Dentons US LLP
20 1999 Harrison Street, Suite 1300
21 Oakland, CA 94612

22 For Held:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

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

29 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **12. POST-EXECUTION ACTIVITIES**

2 Held agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent Judgment,
5 which Held shall draft and file, and Deflecto shall support, including appearing at the settlement
6 approval hearing if requested.

7 **13. MODIFICATION**

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

11 **14. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment and have read, understand,
13 and agree to all the terms and conditions contained herein.

14 **AGREED TO:**

AGREED TO:

15
16 Date: 9/18/18

Date: _____

17 By: *Anthony E. Held*
18 ANTHONY E. HELD, PH.D., P.E.

17 By: _____
18 Paul Thompson, Chief Executive Officer
19 DEFLECTO, LLC

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14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understand, and agree to all the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: _____

Date: September 21st, 2018

By: _____
ANTHONY E. HELD, PH.D., P.E.

By: 
Paul Thompson, Chief Executive Officer
DEFLECTO, LLC