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CVS PHARMACY, INC.

12
13 SUPERIOR COURT OF CALIFORNIA
14 FOR THE COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION
16

17 ANTHONY HELD, Ph.D., P.E.,

18 Plaintiff,

19 vs.

20 CVS PHARMACY, INC.; *et al.*,

21 Defendants.
22

Case No. CIV 095907

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and CVS Pharmacy, Inc.**

3 This Stipulation and [Proposed] Order Re: Consent Judgment (“Consent Judgment” or
4 “Settlement”) is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or
5 “Plaintiff”) and defendant CVS Pharmacy, Inc. (“CVS” or “Defendant”), with Plaintiff and
6 Defendant collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that CVS has manufactured, distributed, and/or sold children’s bags, plush
17 toys with vinyl components, and children’s vinyl baseball/sporting toys containing di(2-ethylhexyl)
18 phthalate (“DEHP”) in the State of California without the requisite health hazard warnings. DEHP
19 is a phthalate chemical known to the State of California to cause birth defects and other
20 reproductive harm; it is listed by its chemical nomenclature pursuant to Proposition 65. DEHP
21 shall be referred to hereinafter as the “Listed Chemical.”

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are limited to the following three
24 items: (a) children’s bags containing the Listed Chemical, identified and known as *11" Carry Cases*
25 *Baby HS*, No. 13519 (#0 42607 93519 4); (b) plush toys with vinyl components containing the
26 Listed Chemical, identified and known as *Tickle Tickle Santas*, Item #460551 (#6 69703 53312 5);
27 and (c) vinyl baseball/sporting toys containing the Listed Chemical, identified and known as *Jr.*
28

1 *Baseball Gloves and Baseballs*, #80784 (#6 35016 80784 0) that were distributed and/or sold by
2 CVS. Collectively, these items shall be referred to hereinafter as the “Products.”

3 **1.6 Notice of Violation**

4 On April 2, 2009, and April 30, 2009, Dr. Held served CVS and the Office of the California
5 Attorney General, all California counties’ District Attorneys and all City Attorneys of California
6 cities with populations exceeding 750,000 (collectively, “Public Enforcers”) with two separate 60-
7 Day Notices of Violation (“Notices”) that provided CVS and the Public Enforcers with notice of
8 alleged violations of Proposition 65 in connection with the sale of the Products containing the
9 Listed Chemical by CVS. No Public Enforcer has prosecuted any of the allegations set forth in the
10 Notices.

11 **1.7 Complaint**

12 On November 20, 2009, in the Superior Court for the County of Marin, Dr. Held filed the
13 instant action. Thereafter, on January 21, 2010, Dr. Held filed a *Fist Amended* Complaint, the
14 operative pleading in this action (“Complaint”), against CVS for alleged violations of Proposition
15 65 based on CVS’ failure to provide clear and reasonable warnings before allegedly causing
16 exposures to the Listed Chemical contained in the Products.

17 **1.8 No Admission**

18 CVS denies the allegations contained in the Notices and Complaint and maintains that all of
19 the products that it has sold and distributed in California, including the Products, have been, and
20 are, in compliance with all laws, including, without limitation, Proposition 65. Nothing in this
21 Consent Judgment shall be construed as an admission by CVS of any fact, finding, conclusion,
22 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
23 construed as an admission by CVS of any fact, finding, conclusion, issue of law, or violation of
24 law, such being specifically denied by CVS. In order to avoid further litigation costs and attorneys’
25 fees, CVS chooses to resolve this matter with Dr. Held through settlement as set forth herein.
26 However, this Section shall not diminish or otherwise affect CVS’ obligations, responsibilities, and
27 duties under this Consent Judgment.
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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over CVS as to the allegations contained in the Complaint, that venue is proper in the
4 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment as a full and binding resolution of all claims which were or could have been
6 raised in the Complaint against CVS based on the facts alleged therein and in the Notices.

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term "Effective Date" shall mean April 1, 2011.

9 **2. INJUNCTIVE RELIEF**

10 As of the Effective Date, CVS shall not ship, sell, or offer to ship for sale in California any
11 Products containing more than 1,000 parts per million ("ppm") of the Listed Chemical when
12 analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or
13 a equivalent methods as may be allowed under Proposition 65.

14 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

15 In settlement of all claims related to the Products and DEHP referred to in the Complaint,
16 and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), CVS shall pay \$3,500 in
17 civil penalties. These civil penalties are to be apportioned in accordance with California Health &
18 Safety Code §§ 25249.12(c)(1) & (d), with 75% of these funds remitted to the State of California's
19 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
20 penalty remitted to Dr. Held. CVS shall issue two checks for the penalty payment: (a) one check
21 made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$2,625, representing
22 75% of the total penalty; and (b) one check payable to "The Chanler Group in Trust for Anthony
23 Held" in the amount of \$875, representing 25% of the total penalty. Two 1099 forms shall be issued
24 for the above-payments to: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,
25 Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose tax information shall be
26 provided upon request five calendar days before the payment is due. Payment shall be delivered to
27 Dr. Held's counsel at the following address on or before May 1, 2011:
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The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. CVS then expressed its preference to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure ("CCP") § 1021.5, for all work performed through the Court approval of this agreement. CVS shall reimburse Dr. Held and his counsel for fees and costs incurred as a result of investigating, bringing this matter to CVS' attention, litigating and negotiating a settlement in the public interest, drafting and filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health & Safety Code § 25249.7(f), corresponding with opposing counsel, responding to any third party objections, filing a notice of entry of approval, and appearing before the Court in relation to the approval process. CVS shall pay Dr. Held and his counsel \$33,000 for all attorneys' fees and costs. Such fees and costs are exclusive of fees and costs that may be incurred in the event of an appeal. CVS shall issue a separate 1099 for fees and costs paid to The Chanler Group (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before May 1, 2011, to the following address:

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

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Dr. Held's Release of CVS**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
5 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
6 the interest of the general public, hereby waives all rights to institute or participate in, directly or
7 indirectly, any form of legal action and releases all claims including, without limitation, all actions
8 and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs,
9 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,
10 and attorney's fees) of any nature whatsoever whether known or unknown, fixed or contingent
11 (collectively "Claims"), against CVS and each of its distributors, wholesalers, suppliers, licensors,
12 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
13 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
14 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
15 "Releasees"). This release is limited to those Claims that arise under Proposition 65 as such Claims
16 relate to alleged failure to warn about exposures to, or identification of, the Listed Chemical
17 contained in the Products that were sold by CVS.

18 **5.2 CVS' Release of Dr. Held**

19 CVS waives any and all claims against Dr. Held, his attorneys, and other representatives for
20 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
21 Held and his attorneys and other representatives, whether in the course of investigating Claims or
22 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to
23 the Products.

24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
26 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected.
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1 **7. ATTORNEY'S FEES**

2 In the event that, after the execution of this proposed Consent Judgment, (1) a dispute arises
3 with respect to any provision of this proposed Consent Judgment, or (2) either party takes
4 reasonable and necessary steps to enforce the terms of this Consent Judgment, the prevailing party
5 in such dispute or enforcement action shall be entitled to reasonable attorneys' fees and costs.
6 Further, CVS shall not be imposed a penalty for violating section 2 of this Consent Judgment if it
7 reasonably relied on written statements, confirmations, or verifications as to the DEHP content of
8 the Products by the manufacturers, distributors, and/or suppliers of the Products that it sells in its
9 California.

10 **8. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to the Products, then CVS shall provide
14 written notice to Dr. Held of any asserted change in the law, and shall have no further obligations
15 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
16 affected.

17 **9. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and sent by: (i) personally delivered, (ii) first-class,
20 (registered or certified mail) return receipt requested; or (iii) overnight courier to any Party by the
21 other Party at the following addresses:

22 To CVS:

23 Karen Feisthammel, Esq.
24 Senior Legal Counsel
25 CVS PHARMACY, INC.
26 One CVS Drive
27 Woonsocket, RI 02895
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with a copy to:

John E. Dittoe, Esq.
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

To Dr. Held:

Proposition 65 Coordinator
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to Approve the Consent Judgment (“Motion”) is required to obtain judicial approval of this Settlement. In furtherance of obtaining such approval, Dr. Held, CVS and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain judicial approval of the same in a timely manner. For the purposes of this Section, “best efforts” shall mean, at minimum, cooperating in the drafting and filing of the Motion for judicial approval of the Settlement.

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days

1 in advance of its consideration by the Court. Dr. Held shall be entitled to his reasonable fees and
2 costs incurred in the modification process under CCP § 1021.5 if CVS seeks to modify the terms of
3 this Consent Judgment.

4 **14. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective parties and have read, understood, and agree to all of the terms and conditions of this
7 Consent Judgment.

8 **AGREED TO:**

AGREED TO:

9 **APPROVED**

By Anthony Held at 2:38 pm, Mar 25, 2011

10 Date: _____

Date: _____

11 By: Anthony E Held

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

11 By: _____

12 Karen Feisthamel,
13 Assistant Secretary/Senior Legal Counsel
14 CVS PHARMACY, INC.

14 **IT IS SO ORDERED.**

15 Date: _____

16 _____
17 Judge of the Superior Court