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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ANTHONY E. HELD, PH.D., P.E.,)	Case No. CGC-09-491784
)	
Plaintiff,)	CONSENT JUDGMENT
)	
v.)	
)	
HMSHOST CORPORATION; HMS HOST)	
USA, INC.,)	
)	
Defendants.)	

1. INTRODUCTION

1.1 Anthony E. Held, Ph.D., P.E., and HMS Host

This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Held"), and HMSHost Corporation and HMS Host USA, Inc. (hereinafter "HMS Host"), with Held and HMS Host collectively referred to as the "Parties." Held is an individual residing in California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. HMS Host employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 et seq. (hereinafter "Proposition 65").

1 **1.2 General Allegations**

2 Held alleges that HMS Host distributes, and/or sells in the State of California key chains
3 with vinyl components containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) without the
4 requisite health hazard warnings under Proposition 65. DEHP is listed pursuant to Proposition 65
5 as a chemical known to the State of California to cause birth defects and other reproductive harm.
6 DEHP shall be referred to hereinafter as the “Listed Chemical.”

7 **1.3 Product Description**

8 The products that are covered by this Consent Judgment are defined as follows: key
9 chains with vinyl components, including, but not limited to Keychain, Black Croc with Sun (#6
10 53034 19250 2). All such items distributed and/or sold by HMS Host shall be referred to herein
11 as the “Products.”

12 **1.4 Notice of Violation**

13 On April 30, 2009, Held served HMS Host and various public enforcement agencies with
14 a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided HMS Host
15 and such public enforcers with notice that alleged that HMS Host was in violation of Proposition
16 65 for failing to warn consumers and customers that key chains with vinyl components distributed
17 and/or sold by HMS Host and that contained DEHP exposed users in California to the Listed
18 Chemical.

19 **1.5 Complaint**

20 On August 24, 2009, Dr. Held, acting, in the interest of the general public in California,
21 filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of San
22 Francisco against HMS Host and Does 1 through 150, alleging violations of Health & Safety
23 Code § 25249.6 based on the alleged exposures to DEHP contained in the Products.

24 **1.6 No Admission**

25 HMS Host denies the material, factual and legal allegations contained in Dr. Held’s
26 Notices and Complaint and maintains that all Products it has distributed and/or sold in California
27 have been and are in compliance with all applicable laws. Nothing in this Consent Judgment
28 shall be construed as an admission by HMS Host of any fact, finding, issue of law, or violation of

1 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
2 by HMS Host of any fact, finding, conclusion, issue of law, or violation of law, such being
3 specifically denied by HMS Host. However, this Section shall not diminish or otherwise affect
4 HMS Host's obligations, responsibilities, and duties under this Consent Judgment.

5 **1.7 Consent to Jurisdiction**

6 For purposes of this Consent Judgment only, the parties stipulate that this Court has
7 jurisdiction over HMS Host as to the allegations contained in the Complaint, that venue is proper
8 in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of
9 this Consent Judgment.

10 **1.8 Effective Date**

11 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
12 consent judgment is entered by the court.

13 **2. INJUNCTIVE RELIEF: REFORMULATION**

14 **2.1** In lieu of providing Proposition 65 warnings for the Products, HMS Host agrees
15 after August 31, 2009, to only sell or offer for sale in California Products that constitute
16 Reformulated Products as defined below in Section 2.2.

17 **2.2 Reformulation Standards**

18 Reformulated Products are defined as those containing less than 1,000 parts per million
19 ("ppm") of DEHP, as measured by Environmental Protection Agency ("EPA") testing
20 methodologies 3580A and 8270C, or by any methodology accepted by a federal or state agency
21 for establishing DEHP content in Products.

22 **3. MONETARY PAYMENTS**

23 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

24 3.1.1 In settlement of all claims related to the Products and Listed Chemical
25 referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code §
26 25249.7(b), HMS Host shall pay \$3,000 in civil penalties.

27 3.1.2 Civil penalties are to be apportioned in accordance with California Health
28 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of

1 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
2 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). HMS
3 Host shall issue two separate checks for the penalty payment: (a) one check made payable to “
4 Chanler Law Group in Trust for OEHHA” in the amount of \$2,250, representing 75% of the total
5 penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of
6 \$750, representing 25% of the total penalty. Two separate 1099s shall be issued for the above-
7 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)
8 Anthony Held, whose information shall be provided five calendar days before the payment is due.

9 3.1.3 Counsel for HMS Host shall collect the penalty payment and hold it in its
10 Trust Account until such time as payment is due to Dr. Held’s counsel. Counsel for HMS Host
11 shall certify in writing to Dr. Held’s counsel, not later than November 20, 2009, that it is in
12 receipt of such penalty payment. Payment shall be delivered to Dr. Held’s counsel within 5
13 business days of the Effective Date, at the following address:

14 Chanler Law Group
15 Attn: Proposition 65 Coordinator
16 2560 Ninth Street, Suite 214
17 Berkeley, CA 94710

18 **4. REIMBURSEMENT OF FEES AND COSTS**

19 **4.1 Attorney Fees and Costs**

20 Pursuant to the private attorney general doctrine codified at California Code of Civil
21 Procedure (C.C.P.) § 1021.5 and general contract principles, HMS Host shall reimburse Dr. Held
22 and his counsel a total of \$31,000 for fees and costs incurred as a result of investigating, bringing
23 this matter to HMS Host’s attention, and litigating and negotiating a settlement in the public
24 interest. Counsel for HMS Host shall collect the fee and cost payment and hold it in its Trust
25 Account until such time as payment is due to Dr. Held’s counsel. Counsel for HMS Host shall
26 certify in writing to Dr. Held’s counsel, not later than November 20, 2009, that it is in receipt of
27 such fee and cost payment. HMS Host shall issue a separate 1099 for fees and costs (EIN: 94-
28 3171522) and shall make the check payable to “Hirst & Chanler LLP” and shall be delivered
within 5 business days of the Effective Date.

1 Chanler Law Group
2 Attn: Proposition 65 Coordinator
3 2560 Ninth Street, Suite 214
4 Berkeley, CA 94710

5 **5. CLAIMS COVERED AND RELEASE**

6 **5.1 Claims Covered**

7 This Consent Judgment is a full, final, and binding resolution between Dr. Held, on behalf
8 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees,
9 and the general public, and HMS Host, its parents, shareholders, divisions, subdivisions,
10 subsidiaries, affiliates, partners, sister companies, employees, directors, insurers, and attorneys
11 and their successors and assigns ("Defendant Releasees"), of any violation of Proposition 65 or
12 any other statutory or common law claims that have been or could have been asserted in the
13 complaint against HMS Host and Defendant Releasees regarding the presence of, or the failure to
14 warn about exposure to, the Listed Chemical in Products distributed, or sold by HMS Host prior
15 to the Effective Date. Compliance with the terms of this Consent Judgment by HMS Host and
16 Defendant Releasees after the Effective Date constitutes compliance with Proposition 65
17 regarding the presence of, and the failure to warn about exposure to, the Listed Chemical in
18 Covered Products distributed or sold by HMS Host after the Effective Date.

19 **5.2 Dr. Held's Release of HMS Host**

20 5.2.1 In further consideration of the promises and agreements herein contained,
21 the injunctive relief commitments set forth in Section 2, and for the payments to be made
22 pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents,
23 representatives, attorneys, successors, and/or assignees, and the general public, hereby waives
24 with respect to Products all rights to institute or participate in, directly or indirectly, any form of
25 legal action and releases all claims, including, without limitation, all actions, and causes of action,
26 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,
27 or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of
28 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
against HMS Host and Defendant Releasees resolved under this Section.

1 5.2.2 Dr. Held also, in his individual capacity only and not in his representative
2 capacity, provides a general release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
4 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
5 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Dr.
6 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
7 provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
12 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
13 DEBTOR.

14 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives
15 and relinquishes any and all rights and benefits which he may have under, or which may be
16 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under
17 any other state or federal statute or common law principle of similar effect, to the fullest extent
18 that he may lawfully waive such rights or benefits pertaining to the released matters. In
19 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
20 complete release notwithstanding the discovery or existence of any such additional or different
21 claims or facts arising out of the released matters.

22 5.2.3 Upon court approval of the Consent Judgment, the Parties waive their
23 respective rights to a hearing or trial on the allegations of the complaint.

24 5.2.4 The parties further understand and agree that this release shall not extend
25 upstream to any entities that manufactured the Products or any component parts thereof, or any
26 distributors or suppliers who sold the Products or any component parts thereof to HMS Host.

27 **5.3 HMS Host's Release of Dr. Held**

28 HMS Host waives any and all claims against Dr. Held, his attorneys, and other
representatives for any and all actions taken or statements made (or those that could have been
taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
2 matter, and/or with respect to the Products, as of the Effective Date.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
6 months after it has been fully executed by all parties.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California.

10 **8. NOTICES**

11 Unless specified herein, all correspondence and notices required to be provided pursuant
12 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
13 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
14 other party at the following addresses:

15 To HMS Host:
16 HMSHost Corporation
17 Attn.: General Counsel
18 6905 Rockledge Drive
19 Mail Stop 7-1
20 Bethesda, MD 20817

21 With a copy to:
22 Jeffrey B. Margulies
23 Fulbright & Jaworski, LLP
24 555 South Flower Street
25 41st Floor
26 Los Angeles, CA 90071

27 To Dr. Held:
28 CHANLER LAW GROUP
Attn: Proposition 65 Coordinator
2560 Ninth Street, Suite 214
Berkeley, CA 94710

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.

1 **9. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same documents.

5 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

6 Dr. Held will comply with the reporting form requirements referenced, in California
7 Health & Safety Code §25249.7(f).

8 **11. MODIFICATION**

9 This Consent Judgment may be modified only: (1) by written agreement of the parties; or
10 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
11 Court.

12 **12. ATTORNEY'S FEES**

13 **12.1** A Party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs
15 unless the unsuccessful Party has acted with substantial justification. For purposes of this
16 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
17 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

18 **12.2** Except as specifically provided in the above paragraph and in Section 4.1, each
19 Party shall bear its own costs and attorney's fees in connection with this action.

20 **12.3** Nothing in this Section 12 shall preclude a Party from seeking an award of
21 sanctions pursuant to law.

22 **13. ENTIRE AGREEMENT**

23 This Settlement Agreement contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
28 deemed to exist or to bind any of the Parties.

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14. AUTHORIZATION

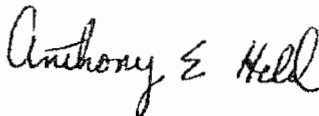
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: November 06 , 2009

Date: November 10, 2009



By: _____
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: _____
Defendant, HMSHost Corporation, HMS
Host USA, Inc.