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12 RUSS BERRIE AND COMPANY, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF MARIN

16 ANTHONY HELD, Ph.D., P.E.,
17 Plaintiff,
18 v.
19 RUSS BERRIE AND COMPANY, INC.; *et al.*
20 Defendants.

Case No. CIV 094819

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

Complaint filed: September 22, 2009

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Russ Berrie and Company, Inc.**

3 This Stipulation and Proposed Consent Judgment (“Consent Judgment”) is entered into by
4 and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and defendant Russ
5 Berrie and Company, Inc. (“Russ Berrie” or “Defendant”), with Plaintiff Held and Russ Berrie
6 collectively referred to herein as the “Parties” and individually as a “Party.”

7 **1.2 Plaintiff Dr. Anthony Held**

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

11 **1.3 Defendant**

12 Russ Berrie 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 § 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that Russ Berrie has manufactured, distributed and/or sold vinyl bags, plush
17 toys with vinyl components and vinyl keychains containing di(2-ethylhexyl)phthalate (hereinafter
18 “DEHP”) in the State of California without required Proposition 65 warnings. DEHP is listed
19 pursuant to Proposition 65, and is known to cause cancer as well as birth defects and other
20 reproductive harm. For purposes of this agreement, DEHP shall be referred to as the “LISTED
21 CHEMICAL”.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: (a)
24 children’s vinyl bags containing excessive levels of the LISTED CHEMICAL including, but not
25 limited to, *Keroppi Cell Phone Case, Item No. 30289 (#0 39915 30289 3)*; (b) plush toys with vinyl
26 components containing excessive levels of the LISTED CHEMICAL including, but not limited to,
27 *The Simpsons Homer Bowler, #0215 (#0 39915 38226 0)*’ and (c) vinyl keychains containing
28 excessive levels of the LISTED CHEMICAL including, but not limited to, *Spider-Man Backpack*

1 *Clip, Item No. 38202 (#0 39915 38202 4).. All such products containing the LISTED CHEMICAL*
2 *are referred to hereinafter as the "Products."*

3 **1.6 Notices of Violation**

4 Dr. Held asserts that on or about March 5, 2009, May 6, 2009 and June 30, 2009, he served
5 Russ Berrie and the Office of the California Attorney General of the State of California, all
6 California counties' District Attorneys and all City Attorneys of California cities with populations
7 exceeding 750,000, (collectively, "Public Enforcers") with documents entitled "60-Day Notice of
8 Violation", "Supplemental Notice of Violation" and "Second Supplemental Notice of Violation"
9 respectively (the "Notices"), that provided Russ Berrie and Public Enforcers with notice of alleged
10 violations of Proposition 65 for failing to warn consumers vinyl bags, plush toys with vinyl
11 components and vinyl keychains containing the LISTED CHEMICAL that Russ Berrie sold
12 allegedly exposed users in California to the LISTED CHEMICAL. To the best of Parties'
13 knowledge, no Public Enforcer has diligently prosecuted any of the allegations set forth in the
14 Notice.

15 **1.7 Complaint**

16 On September 22, 2009, Dr. Held, who was and is acting in the interest of the general public
17 in California, filed a complaint ("Complaint" or "Action") in the Superior Court for the County of
18 Marin against Russ Berrie and Does 1 through 150, alleging violations of Proposition 65 based on
19 the allegations in the Notice.

20 **1.8 No Admission**

21 Russ Berrie denies that any Products that it has sold and distributed in California do not
22 comply with Proposition 65 or any other law. Nothing in this Consent Judgment shall be construed
23 as an admission by Russ Berrie of any fact, finding, issue of law, or violation of law, nor shall
24 compliance with this Consent Judgment constitute or be construed as an admission by Russ Berrie
25 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
26 Russ Berrie. In order to avoid the costs and expenses of litigation and without admitting liability or
27 wrongdoing, Russ Berrie has elected to resolve this matter by settlement and on the terms set forth
28

1 herein. However, this section shall not diminish or otherwise affect Russ Berrie's obligations,
2 responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 1,
11 2010.

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

13 **2.1 Reformulation**

14 Except as provided in Section 2.2, beginning on January 31, 2010, Russ Berrie shall not sell,
15 ship, or offer to be shipped, any Products for sale in California, containing DEHP unless such
16 Products contain less than 1,000 (one thousand) parts per million ("ppm") of DEHP when analyzed
17 pursuant to: Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C,
18 or other comparable methodologies recognized and accepted by one or more federal and/or state
19 agencies, including the Consumer Product Safety Commission.

20 **2.2 Interim Warnings**

21 (a) Commencing on January 31, 2010, Russ Berrie shall not sell, ship, or
22 offer to be shipped for sale in California any Product that does not meet the Reformulation
23 Requirement of Section 2.1 without a clear and reasonable warning as required in Section 2.2 (b).

24 (b) **Warning Methods.**

25 (i) **Product Labeling.** Russ Berrie shall affix to the packaging, labeling,
26 or directly on each Product that states:

27 **WARNING:** This product contains DEHP a phthalate chemical
28 known to the State of California to cause birth defects
and other reproductive harm.

1 (ii) **Point-of-Sale Warnings.** Russ Berrie may provide warning signs in
2 the form below to its customers in California with instructions to post the warnings in close
3 proximity to the point of display of the Products and in a manner such that the consumer
4 understands to which specific Product the warning applies.

5 **WARNING:** This product contains DEHP a phthalate chemical
6 known to the State of California to cause birth defects
and other reproductive harm.

7 (c) Warnings shall be prominently placed with such conspicuousness as
8 compared with other words, statements, designs, or devices as to render it likely to be read and
9 understood by an ordinary individual under customary conditions of purchase or use.

10 **3. MONETARY PAYMENTS**

11 In full and final settlement of Plaintiff's claims, the total monetary settlement payments to
12 be paid by Russ Berrie are set forth in Sections 3 and 4.

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

14 Civil penalties are to be apportioned in accordance with California Health & Safety Code
15 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental
16 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony
17 Held as provided by California Health & Safety Code § 25249.12(d).

18 Pursuant to Health & Safety Code § 25249.7(b), Russ Berrie shall pay civil penalties, as set
19 forth below:

20 Russ Berrie shall issue two separate checks for the penalty payment: (a) one check made
21 payable to "Chanler Law Group in Trust For OEHHA" in the amount of \$1,500.00 representing
22 75% of the total penalty; and (b) one check to "Chanler Law Group in Trust for Anthony Held" in
23 the amount of \$500.00 representing 25% of the total penalty. Two separate 1099s shall be issued
24 for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486);
25 and (b) Anthony Held, whose information shall be provided five calendar days before the payment
26 is due. Payment shall be delivered to Dr. Held's counsel on or before December 31, 2009, as
27 follows:
28

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

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

5 **4.1 Attorney Fees and Costs**

6 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 this fee issue to be resolved after the material terms of the agreement had been settled. Russ Berrie
9 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
10 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
11 Dr. Held and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the
13 mutual execution of this agreement. The reimbursement of attorneys' fees and costs under Section
14 4.1 shall be paid, as follows:

15 Russ Berrie shall reimburse Dr. Held and his counsel the total of \$33,000.00 for fees and
16 costs incurred as a result of investigating, bringing this matter to Russ Berrie's attention, and
17 litigating and negotiating a settlement in the public interest. Dr. Held and his counsel agree that the
18 above-stated amount for attorneys' fees and costs shall include all work necessary to prepare and
19 file the Motion to Approve the Consent Judgment, all necessary accompanying paperwork, filing
20 fees and any additional work required to obtain court approval of the Consent Judgment, including
21 an appearance at the hearing, if necessary. Russ Berrie shall issue a separate 1099 for fees and costs
22 (E1N:94-3171522) and shall make the check payable to "Chanler Law Group" and shall be
23 delivered on or before December 31, 2009, as follows:

24 Chanler Law Group
25 Attn: Proposition 65 Coordinator
26 2560 Ninth Street, Suite 214
27 Berkeley, California 94710
28

1
2
3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Dr. Held's Release of Russ Berrie and Its Downstream Customers**

5 In further consideration of the promises and agreements herein contained, and for the
6 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current
7 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
8 public only as to the Products, hereby waives all rights to institute or participate in, directly or
9 indirectly, any form of legal action and releases all claims including, without limitation, all actions,
10 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
13 (collectively "Claims"), that were brought or could have been brought against Russ Berrie or its
14 parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers,
15 licensors, licensees, or any other person in the course of doing business, and the successors and
16 assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell
17 Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers
18 and representatives of each of them (collectively "Defendant Releasees") in this Action. This release
19 is intended to be a full, final, and binding resolution of those Claims that arise from or relate to facts
20 alleged in the Notice and the Complaint, as against Russ Berrie and Defendant Releasees, concerning
21 Russ Berrie's alleged failure to warn about exposures to DEHP contained in the Products.

22 Dr. Held also, on behalf of himself, his past and current agents, representatives, attorneys,
23 successors, and/or assignees, and in his individual capacity only, provides a general release herein
24 which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Dr. Held
25 against Russ Berrie and Defendant Releasees of any nature, character or kind, known or unknown,
26 suspected or unsuspected, arising under Proposition 65 or an alleged failure to provide warnings for
27 the Products manufactured, distributed or sold by Russ Berrie. Dr. Held acknowledges that he is
28 familiar with Section 1542 of the California Civil Code, which provides as follows:

1 A general release does not extend to claims which the creditor does
2 not know or suspect to exist in his favor at the time of executing
3 the release, which if known by him must have materially affected
4 his settlement with the debtor.

5 Dr. Held, in his individual capacity only, expressly waives and relinquishes any and all
6 rights and benefits which he may have under, or which may be conferred on him by the provisions
7 of Section 1542 of the California Civil Code as well as under any other state or federal statute or
8 common law principle of similar effect, to the fullest extent that he may lawfully waive such rights
9 or benefits pertaining to the released matters. In furtherance of such intention, the release hereby
10 given shall be and remain in effect as a full and complete release notwithstanding the discovery or
11 existence of any such additional or different claims or facts arising out of the released matters.

12 Notwithstanding the foregoing, this release shall not limit or affect Dr. Held's right to
13 enforce the terms of the Consent Judgment.

14 **5.2 Effect of Consent Judgment**

15 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
16 future, concerning compliance by Russ Berrie and Defendant Releasees with the requirements of
17 Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by
18 Russ Berrie.

19 **5.3 Russ Berrie's Release of Dr. Held**

20 Russ Berrie waives any and all Claims against Dr. Held, his attorneys, and other
21 representatives for any and all actions taken or statements made (or those that could have been
22 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
23 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter,
24 and/or with respect to the Products. Russ Berrie provides a general release herein which shall be
25 effective as a full and final accord and satisfaction, as a bar to all released Claims described herein
26 that it may have against Dr. Held, of any nature, character or kind, known or unknown, and
27 suspected or unsuspected. Russ Berrie acknowledges that it is familiar with Section 1542 of the
28 California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does
not know or suspect to exist in his favor at the time of executing

1 the release, which if known by him must have materially affected
2 his settlement with the debtor.

3 Russ Berrie expressly waives and relinquishes any and all rights and benefits which it may
4 have under, or which may be conferred on it by the provisions of Section 1542 of the California
5 Civil Code as well as under any other state or federal statute or common law principle of similar
6 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
7 released matters. In furtherance of such intention, the release hereby given shall be and remain in
8 effect as a full and complete release notwithstanding the discovery or existence of any such
9 additional or different claims or facts arising out of the released matters.

10 Notwithstanding the foregoing, this release shall not limit or affect Russ Berrie's right to
11 enforce the terms of this Consent Judgment.

12
13 **6. COURT APPROVAL**

14 Notwithstanding Section 1.10, this Consent Judgment is not effective until it is approved and
15 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by
16 the Court within one year after it has been fully executed by all Parties. If the Court does not
17 approve the Consent Judgment, the Parties shall meet and confer as to (and jointly agree on)
18 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
19 of action to take, then the case shall proceed in its normal course on the trial court's calendar, and
20 any monies that have been provided to Plaintiff, or his counsel, pursuant to Section 3 and/or Section
21 4 above, shall be refunded within thirty (30) days of Russ Berrie providing written notice thereof.
22 In the event that this Consent Judgment is entered by the Court and subsequently overturned by any
23 appellate court, any monies that have been provided to Plaintiff, or his counsel pursuant to Section 3
24 and/or Section 4 above, shall be refunded within fifteen (15) days of the appellate decision
25 becoming final. If the Court's approval is ultimately overturned by an appellate court, the Parties
26 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
27
28

1 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
2 proceed in its normal course on the trial court's calendar.

3
4
5 **7. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
8 remaining shall not be adversely affected.

9 **8. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the
11 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments, and understandings related hereto. No representations, oral or
13 otherwise, express or implied, other than those contained herein have been made by any Party
14 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
15 to exist or to bind any of the Parties.

16 **9. GOVERNING LAW**

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

23 **10. NOTICES**

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

28 To Russ Berrie:

1 Brian Ledger, Esq.
2 GORDON & REES
3 101 West Broadway, Suite 1600
4 San Diego, CA 92101

5 To Dr. Held:

6 Proposition 65 Controller
7 CHANLER LAW GROUP
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710-2565

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

13 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

18 Dr. Held agrees to comply with the reporting form requirements referenced in California
19 Health & Safety Code §25249.7(f).

20 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

21 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
22 noticed motion is required to obtain judicial approval of this Consent Judgment. Dr. Held and Russ
23 Berrie agree to mutually employ their best efforts to support the entry of this agreement as a
24 Consent Judgment by the trial court and defend the agreement against any appellate review.
25 Accordingly, Dr. Held agrees to file a motion to approve the Consent Judgment, and Russ Berrie
26 agrees to support it.

27 **14. MODIFICATION AND ENFORCEMENT**

28 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. In the event that, after the
Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions of

1 this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
2 prevailing Party shall be entitled to reasonable attorneys' fees and costs.

3
4 **15. EFFECT OF CONSENT JUDGMENT**

5 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
6 Parties and their respective successors and assigns.

7 **16. AUTHORIZATION**

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

11 **AGREED TO:**

AGREED TO:

12
13 Date: 12/29/09

Date: _____

14 By: Anthony E. Held
15 Plaintiff
16 ANTHONY E. HELD, Ph.D., P.E.

By: _____
President
RUSS BERRIE AND COMPANY, INC.

17 **IT IS SO ORDERED.**

18
19 Date: _____

JUDGE OF THE SUPERIOR COURT

1 Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions of
2 this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
3 prevailing Party shall be entitled to reasonable attorneys' fees and costs.

4
5 **15. EFFECT OF CONSENT JUDGMENT**

6 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
7 Parties and their respective successors and assigns.

8 **16. AUTHORIZATION**

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

12 **AGREED TO:**

13
14 Date: _____

15
16 By: _____
17 Plaintiff
18 ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

13
14 By: 
Date: _____

15
16 Date: 2/12/10
17 By: _____
18 President
19 RUSS BERRIE AND COMPANY, INC.

AGREED TO:

19
20 Date: 12-30-09

21
22 By:  President
23 President
24 RUSS BERRIE U.S. GIFT, INC.

25 **IT IS SO ORDERED.**

26
27 Date: _____

28

JUDGE OF THE SUPERIOR COURT