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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,)

14 v.)

15 BEAUMONT PRODUCTS INCORPORATED; *et*)
16 *al.*,)

17 Defendants.)
_____)

CASE NO. CIV 1601140

[PROPOSED] CONSENT JUDGMENT

Action Filed: March 30, 2016

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment (“Consent Judgment”) is entered into by and between plaintiff
4 Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and defendant Beaumont Products Incorporated
5 (“Beaumont”) with Dr. Held and Beaumont collectively referred to as the “Parties” and individually
6 as a “Party.”

7 **1.2 Anthony E. Held, Ph.D., P.E.**

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

11 **1.3 Beaumont Products Incorporated and Benzophenone**

12 Beaumont manufactures, distributes, and/or sells sunscreen. One ingredient used in
13 sunscreen to enhance its ability to provide protection from the sun is octocrylene, an active
14 ingredient approved for use in sunscreens by the Federal Food & Drug Administration (“FDA”).
15 Octocrylene can at times contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical
16 listed under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
17 Safety Code section 25249.5 *et seq.* (“Proposition 65”) as a chemical “known to the state to cause
18 cancer” as Proposition 65 defines that phrase.

19 **1.4 Products Covered**

20 This Consent Judgment covers and applies to sunscreen containing benzophenone,
21 including, but not limited to, *Dermatone Sunscreen Stick SPF 50, UPC #0 87052 72365 1* and
22 *Dermatone Continuous Spray Sunscreen Broad Spectrum SPF 30, UPC #0 87052 72439 9* that are
23 manufactured, imported, distributed, sold and/or offered for sale in California by Beaumont
24 (“Covered Products”).

25 **1.5 General Allegations**

26 Dr. Held alleges in the Complaint that Beaumont manufactured, and/or distributed for sale in
27 California, and/or sold in California, Covered Products containing benzophenone without “a clear
28 and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr. Held

1 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future
2 and to settle his alleged claims.

3 **1.6 Notice of Violation**

4 On July 31, 2015, Dr. Held served Beaumont and the requisite public enforcement agencies
5 with a 60-Day Notice of Violation (“Notice”), alleging that Beaumont was in violation of
6 Proposition 65 for failing to warn consumers in California that its sunscreen exposed users to
7 benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is
8 diligently prosecuting the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On March 30, 2016, Dr. Held filed a complaint in the Superior Court in and for the County
11 of Marin against Beaumont and DOES 1-150, alleging violations of California Health & Safety
12 Code section 25249.6, based on exposures to benzophenone contained in certain sunscreen sold by
13 Beaumont in the State of California, *Held v. Beaumont Products Incorporated*, Case No. CIV-
14 1601140 (“Complaint”).

15 **1.8 No Admission**

16 Beaumont denies all the respective material, factual, and legal allegations contained in the
17 Notice and Complaint. Beaumont maintains that all of its products, including the Covered Products,
18 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
19 construed as an admission against interest by Beaumont of any fact, finding, conclusion, issue of
20 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
21 as an admission against interest by Beaumont of any fact, finding, conclusion, issue of law, or
22 violation of law. This section shall not, however, diminish or otherwise affect Beaumont’s
23 obligations, responsibilities, and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Beaumont as to the allegations in the Complaint, that venue is proper in the County
27 of Marin, Beaumont agrees that it employs or has employed ten or more persons during time
28 periods relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and

1 enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
2 Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
5 this Consent Judgment is approved and entered by the Court, including any unopposed tentative
6 ruling.

7 **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION**

8 **2.1 Reformulation Standard**

9 (a) Whereas, Beaumont, based on inquiry for purposes of this Consent Judgment, has
10 not identified any ingredient in its Covered Products other than octocrylene that is a source of
11 detectable benzophenone in such Covered Products. Further, based upon inquiry for purposes of
12 this Consent Judgment, Beaumont represents that it has investigated and concluded that there are
13 only a few major suppliers of octocrylene for the domestic market and that time and phasing is
14 needed for the marketplace of octocrylene suppliers to make the adjustments necessary to deliver
15 octocrylene with benzophenone meeting the Octocrylene Reformulation Standards.

16 (b) If Beaumont manufactures or causes to be manufactured or sells in California any
17 Covered Product containing benzophenone or octocrylene as of June 1, 2018, Beaumont shall only
18 manufacture, or cause to be manufactured, either Covered Products containing no more than (i) 50
19 parts per million (“ppm”) benzophenone in the Covered Products; or (ii) 500 ppm of benzophenone
20 in the ingredient octocrylene used in the Covered Products. These first standards are interim
21 standards.

22 (c) If Beaumont manufactures or causes to be manufactured or sells in California any
23 Covered Product containing benzophenone or octocrylene as of June 1, 2020, Beaumont shall only
24 manufacture or cause to be manufactured, either Covered Products containing no more than (i) 35
25 ppm benzophenone in the Covered Product; or (ii) 350 ppm of benzophenone in the ingredient
26 octocrylene used in the Covered Products. These second standards are the “Final Reformulation
27 Standards.”
28

1 (d) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) and
2 (c) shall be referred to collectively as the “Reformulation Standards,” consisting of either the
3 Sections 2.1 (b)(i) and (c)(i) (the “Finished Product Reformulation Standards”) or Sections 2.1
4 (b)(ii) and (c)(ii) (the “Octocrylene Reformulation Standards”). Beaumont may at any time, at its
5 own election, comply with either, both, or any combination of the applicable Finished Product
6 Reformulation Standard or the Octocrylene Reformulation Standard with respect to any Covered
7 Product.

8 (e) The Reformulation Standards shall apply to Covered Products which are
9 manufactured by or on behalf of Beaumont on or after the applicable Reformulation Standard dates.

10 **2.2 Supplier Notification**

11 In the event that Beaumont has any current octocrylene supplier or suppliers, Beaumont
12 shall provide, no later than December 31, 2016, written notice (the “Octocrylene Supplier Letter”)
13 to said supplier or suppliers, if any, informing said supplier or suppliers of the Octocrylene
14 Reformulation Standard and urging each supplier to use reasonable efforts to provide expeditiously
15 only octocrylene which complies with the Octocrylene Reformulation Standard. Beaumont shall
16 not include statements in the Octocrylene Supplier Letter that will encourage a supplier to delay
17 compliance with the Octocrylene Reformulation Standard.

18 **2.3 Products No Longer in Beaumont’s Control**

19 No later than seven days after the Effective Date, Beaumont shall send a letter, electronic or
20 otherwise (“Customer Letter”) to: (1) each customer that Beaumont supplied a Covered Product and
21 reasonably understands is located in California, has a California warehouse or distribution center,
22 maintains a retail outlet in California, or has made internet sales into California and (2) each
23 individual or entity that Beaumont reasonably understands or believes to offer a Covered Product
24 for retail sale to consumers in the State of California. The Customer Letter shall advise the
25 recipient that the Covered Product contains benzophenone, a chemical known to the State of
26 California to cause cancer, and request that the recipient return, at Beaumont’s sole expense, all
27 units of the Covered Product held for sale in California, to Beaumont, or dispose of the Covered
28 Product. The Customer Letter shall request a response from the recipient within 15 days confirming

1 whether the Covered Product will be returned or disposed of. Beaumont shall maintain records of
2 all correspondence or other communications generated pursuant to this section for two years after
3 the Effective Date and shall promptly produce copies of such records upon Dr. Held’s request.

4 **2.4 Compliance with Reformulation Standard**

5 (a) In the event that Beaumont elects to sell Covered Products that contain
6 benzophenone and meet the Finished Product Reformulation Standard it may, at its option, either (i)
7 test the Covered Product pursuant to a scientifically appropriate application of U.S. Environmental
8 Protection Agency testing methodologies 3580A, 8270C, or any other scientifically appropriate
9 methodology for determining the benzophenone content in a substance of the form of the specific
10 Covered Product being tested, or (ii) may use the appropriate mathematical calculation based on
11 octocrylene percentage in the Covered Product and the benzophenone concentration in the lot of
12 octocrylene used in the finished Covered Product, based either on testing of the octocrylene lot or
13 on a certificate of analysis documenting benzophenone content from the octocrylene supplier (the
14 “Certificate of Analysis”) at the option of Beaumont.

15 (b) In the event that Beaumont elects to sell Covered Products that contain
16 benzophenone and meet the Octocrylene Reformulation Standard, it shall obtain a Certificate of
17 Analysis or analytical testing report for each lot of octocrylene used in the manufacture of Covered
18 Products. If, after Beaumont has advised its octocrylene suppliers to include a Certificate of
19 Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to include a Certificate
20 of Analysis, Beaumont shall correct the lapse upon discovery.

21 (c) Beaumont may, absent grounds to question the accuracy, demonstrate compliance
22 with either Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate
23 of Analysis or comparable verified quantitative benzophenone content information. Such good faith
24 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene
25 suppliers shall rely on any scientifically appropriate testing methodology for determining the
26 benzophenone content of octocrylene.

1 (d) Beaumont shall retain compliance documentation for three years after delivery of a
2 lot of octocrylene and compliance documentation shall be made available within 30 days of a
3 written request by Dr. Held, who may make no more than two such requests annually.

4 **3. MONETARY PAYMENTS**

5 **3.1 Civil Penalty**

6 Pursuant to Health and Safety Code section 25249.7(b), Beaumont shall pay initial civil
7 penalties and, if applicable, final civil penalties in the total amount of \$16,000. The penalty
8 payments shall be allocated according to Health and Safety Code sections 25249.12(c)(1) and (d),
9 with 75% of the penalty amount paid to the California Office of Environmental Health Hazard
10 Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Dr. Held. Dr. Held’s
11 counsel shall be responsible for remitting Beaumont’s penalty payment(s) under this Settlement
12 Agreement to OEHHA. Each penalty payment shall be made to “The Chanler Group, Anthony E.
13 Held Client Trust Account” and to “OEHHA” and remitted to the address indicated in Section 3.3
14 below.

15 **3.1.1 Initial Civil Penalty.** Within five (5) business days of the Effective Date
16 Beaumont shall issue a check payable to “The Chanler Group, Anthony E. Held Client Trust
17 Account” in the amount of \$1,750, and a check payable to “OEHHA” in the amount of \$5,250.

18 **3.1.2 Final Civil Penalty.** On or before June 30, 2018, Beaumont shall pay a final
19 civil penalty (the “Final Civil Penalty”) in the amount of \$9,000. However, the Final Civil Penalty
20 shall be waived in its entirety if Beaumont certifies that: (a) all Covered Products subject to this
21 Consent Judgment manufactured by or on behalf of Beaumont on or after June 1, 2018, meet the
22 Final Reformulation Standard; or (b) as of June 1, 2018 Beaumont is no longer manufacturing
23 Covered Products or causing them to be manufactured and shall not sell them in California in the
24 future. A responsible official of Beaumont, with personal knowledge after due inquiry, shall
25 provide Dr. Held with a written certification confirming compliance with the above conditions on or
26 before June 15, 2018.

27 **3.1.3 Octocrylene Supplier Letter Content.** In the event that Beaumont was
28 required to send an Octocrylene Supplier letter pursuant to paragraph 2.2, if Beaumont did not

1 include a statement in its Octocrylene Supplier Letter requesting that its supplier use commercially
2 reasonable efforts to achieve an Octocrylene Reformulation Standard of 200 ppm by June 1, 2020, it
3 shall owe an additional \$10,000.00 in civil penalties, due within two (2) business days of the
4 Effective Date, to be allocated and paid as set forth in Section 3.1 of this Consent Judgment.
5 Beaumont shall remit a copy of any required Octocrylene Supplier Letter to Dr. Held no later than
6 January 16, 2017, to the address provided in Section 3.3 below, in order for Dr. Held to ascertain
7 whether or not the \$10,000.00 penalty shall be waived.

8 **3.2 Reimbursement of Fees and Costs**

9 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
11 to be resolved after the material terms of the agreement had been settled. Shortly after the other
12 settlement terms had been finalized, Beaumont expressed a desire to resolve Dr. Held's fees and
13 costs. Beaumont agrees to pay Dr. Held and his counsel under the private attorney general doctrine
14 codified at California Code of Civil Procedure section 1021.5, for all work performed through the
15 mutual execution of this agreement, including without limitation the fees and costs incurred as a
16 result of investigating, bringing this matter to Beaumont's attention, negotiating a settlement, and
17 seeking court approval of the same. Beaumont agrees to pay \$31,000 in fees and costs within five
18 (5) business days of the Effective Date in the form of a check made payable to "The Chanler
19 Group."

20 **3.3 Payment Procedures**

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

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **4. CLAIMS COVERED AND RELEASED**

28 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

This Consent Judgment is a full, final and binding resolution of all claims that were or could
have been asserted in the Complaint arising out of Beaumont's alleged failure to provide

1 Proposition 65 warnings for exposures to benzophenone in its Covered Products. Dr. Held, acting
2 on his own behalf and in the public interest, releases Beaumont and its respective parents,
3 subsidiaries, affiliated entities under (full or partial) common ownership, insurers, manufacturers,
4 suppliers and the directors, officers, employees, attorneys, and predecessors, successors or assigns
5 of each of them (“Releasees”) and each entity to whom Beaumont directly or indirectly distributes
6 or sells the Covered Products including, but not limited to, its downstream distributors, wholesalers,
7 customers, retailers, franchisers, cooperative members, licensors and licensees, and including any
8 and all subsidiaries, parents, marketplace retailers and/or affiliates of the foregoing retailers
9 (collectively, the “Distribution Chain Releasees”) for violations arising under Proposition 65 for
10 unwarned exposures to benzophenone from the Covered Products sold by Beaumont prior to the
11 Effective Date. Dr. Held’s release of claims applies to all Covered Products which Beaumont (or its
12 manufacturers) either manufactured, and/or distributed and/or sold prior to the Effective Date,
13 regardless of the date any person distributes or sells the subject Covered Products.

14 Upon entry of this Consent Judgment by the Court, going forward, Beaumont’s compliance
15 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
16 65 with respect to benzophenone in Beaumont’s prior, current and future Covered Products.

17 **4.2 Dr. Held’s Individual Release of Claims**

18 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
19 a release to Beaumont, Releasees, and Distribution Chain Releasees, which release shall be
20 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
21 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr.
22 Held of any nature, character or kind, whether known or unknown, suspected or unsuspected,
23 arising out of alleged or actual exposures to benzophenone in Beaumont’s Covered Products prior
24 to the Effective Date.

25 **4.3 Beaumont Products Incorporated’s Release of Dr. Held**

26 Beaumont, on behalf of itself, its past and current agents, representatives, attorneys,
27 successors and assignees, hereby waives any and all claims against Dr. Held and his attorneys and
28 other representatives, for any and all actions taken or statements made by Dr. Held and his attorneys

1 and other representatives, whether in the course of investigating claims, otherwise seeking to
2 enforce Proposition 65 against it in this matter, or with respect to the Covered Products up through
3 the Effective Date.

4 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
15 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
16 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
17 limitation the delisting of benzophenone, then Beaumont may provide written notice to Dr. Held of
18 any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no
19 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
20 Covered Products are so affected. None of the terms of this Consent Judgment shall have any
21 application to Covered Products sold outside of the State of California.

22 **8. NOTICE**

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

1 To Beaumont:

2 James A. Geocaris, Esq.
3 Lewis Brisbois Bisgaard & Smith LLP
4 650 Town Center Drive, Suite 1400
5 Costa Mesa, CA 92626

6 With a copy to:

7 Mr. Jeff Picken
8 President and Chief Operating Officer
9 Beaumont Products, Inc.
10 1560 Big Shanty Drive
11 Kennesaw, GA 30144

To Anthony E. Held, Ph.D., P.E.:

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.

9. COUNTERPARTS; FACSIMILE AND PDF 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.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

11. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7(f), Dr. Held is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment. Beaumont agrees to urge the Court to approve this Consent Judgment. If any third party objection to the noticed motion is filed, Dr. Held and Beaumont agree to work together to the extent appropriate, and shall appear at any hearing before the Court to urge the Court to approve the Consent Judgment.

12. MODIFICATION

This Consent Judgment may only be modified by a written instrument executed by the Party or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion to modify shall be served on all Parties and the Office of the Attorney General.

1 **13. AUTHORIZATION**

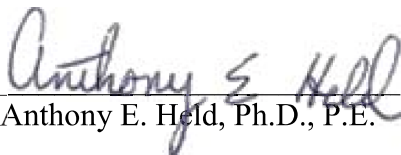
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:

AGREED TO:

7 Date: 12/6/2016

Date: _____

8
9 By: 
10 Anthony E. Held, Ph.D., P.E.

By: _____
Henry Picken, CEO
Beaumont Products Incorporated

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13. AUTHORIZATION

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

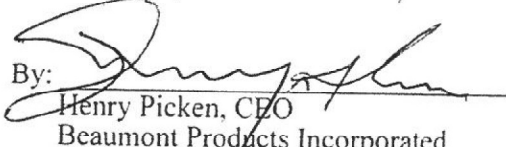
AGREED TO:

AGREED TO:

Date: _____

Date: 2 DEC 2016

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

By: 
Henry Picken, CEO
Beaumont Products Incorporated