

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 Warren M. Klein, State Bar No. 303958
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION
12
13

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

15 Plaintiff,

16 v.

17 CUSTOM LEATHERCRAFT MFG. CO.,
18 INC.; *et al.*,

19 Defendants.
20

Case No. RG15776227

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”
4 or “Plaintiff”) and Custom LeatherCraft Mfg. Co., Inc. (“CLC” or “Defendant”), with Held and CLC
5 each individually 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 CLC employs ten or more persons 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 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that CLC manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC gloves containing diisononyl phthalate (“DINP”), without first providing the exposure
17 warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known
18 to the State of California to cause cancer.

19 **1.5 Product Description**

20 CLC’s products that are covered by this Consent Judgment are defined as vinyl/PVC gloves
21 containing DINP including, without limitation, the *CLC Custom LeatherCraft Vinyl Disposable*
22 *Gloves, #2312, UPC #0 84298 23125 4*, which are manufactured, imported, distributed, sold and/or
23 offered for sale by CLC in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On April 24, 2015, Held served CLC and certain requisite public enforcement agencies with a
26 “60-Day Notice of Violation” (“Notice”) alleging that CLC violated Proposition 65 when it failed to
27 warn their customers and consumers in California that vinyl/PVC gloves expose users to DINP.
28

1 **1.7 Complaint**

2 On or about July 1, 2015, Held filed the instant action (“Complaint”), naming CLC as
3 defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
4 the Notice.

5 **1.8 No Admission**

6 CLC denies the material, factual, and legal allegations contained in the Notice and Complaint,
7 and maintains that all of the products that it has sold and distributed for sale in California, including
8 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
9 shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
10 of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
11 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,
12 however, diminish or otherwise affect CLC’s obligations, responsibilities, and duties under this
13 Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over CLC as to the allegations in the Complaint, that venue is proper in the County of
17 Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
18 Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” means the date that the
21 Court enters this Consent Judgment.

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

23 **2.1 Reformulated Products**

24 Commencing on the January 8, 2016, and continuing thereafter, CLC shall only purchase for
25 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”
26 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
27 purposes of this Consent Judgment, “Reformulated Products” are products that contain DINP in
28

1 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
2 Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-WH-C1001-09.3,
3 or any other methodology utilized by federal or state agencies for the purpose of determining the
4 DINP content in a solid substance.¹

5 **2.2 Product Warnings**

6 Commencing on the January 8, 2016, CLC shall provide clear and reasonable warnings for all
7 Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have warnings
8 and that do not qualify as Reformulated Products. Each warning shall be prominently placed with
9 such conspicuousness as compared with other words, statements, designs, or devices as to render it
10 likely to be read and understood by an ordinary individual under customary conditions before
11 purchase or use. Each warning shall be provided in a manner such that the consumer or user
12 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
13 confusion.

14 **(a) Product Labeling.** CLC shall affix a warning to the packaging, labeling, or directly
15 on each vinyl/PVC glove packaging provided for sale in retail outlets in California that states:

16 **WARNING:** This product contains [a] chemical[s] known
17 to the State of California to cause cancer
18 [, birth defects and other reproductive harm].²

19 **(b) Internet Sales.** In the event that CLC sells Products via the internet to customers
20 located in California, after the January 8, 2016, that are not Reformulated Products, CLC shall
21 provide warnings for such Products sold the internet to California residents. Warnings given on the

22 ¹ Based on Plaintiff's investigation, the Parties are aware that some of CLC's Products contain
23 di(2-ethylhexyl)phthalate ("DEHP"), a Proposition 65 listed chemical, known to the state of
24 California to cause cancer, birth defects and other reproductive harms. On this basis, as to these
25 Products that CLC is aware contain DEHP, Reformulated Products shall also include Products that
26 contain less than 1,000 ppm DEHP content in a solid substance. CLC has voluntarily elected to
27 include DEHP in the injunctive obligations contained in this Consent Judgment, and will receive a
28 properly tailored private release from Held.

² The Parties, during the course of their investigations, became aware that some of CLC's
Products contain DEHP. Therefore, Held agrees that CLC may tailor their warning language as
provided by the bracketed terminology in Sections 2.2(a) and (b), as appropriate, provided CLC has a
basis for its belief.

1 internet shall identify the *specific* Product to which the warning applies as further specified in
2 Sections 2.2(b)(i).

3 (i) **Internet Website Warning.** A warning shall be given in conjunction with the
4 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
5 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
6 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
7 during the checkout process. The following warning statement shall be used and shall appear in any
8 of the above instances adjacent to or immediately following the display, description, or price of the
9 Product for which it is given in the same type size or larger than the Product description text:

10 **WARNING:** This product contains [a] chemical[s] known
11 to the State of California to cause cancer [, birth defects
and other reproductive harm].³

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Civil Penalty Payments**

14 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
15 to in this Consent Judgment, CLC shall pay \$10,500 in civil penalties. Each civil penalty payment
16 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
17 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
18 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Held.

19 **3.1.1 Initial Civil Penalty**

20 On or before January 8, 2016, CLC shall issue a check for its initial civil penalty
21 payment in the amount of \$2,500 to “Peg Carew Toledo, Law Corporation, in trust for CLC.” Peg
22 Carew Toledo, Law Corporation shall provide The Chanler Group with written confirmation within
23 five days of receipt that the funds have been deposited in a trust account. Within five (5) business
24 days of the Effective Date, Peg Carew Toledo, Law Corporation shall issue a check for the initial

25 _____
26 ³ The Parties, during the course of their investigations, became aware that some of CLC’s
27 Products contain DEHP. Therefore, Held agrees that CLC may tailor their warning language as
28 provided by the bracketed terminology in Sections 2.2(a) and (b), as appropriate, provided CLC has a
basis for its belief.

1 civil penalty payment to “Anthony E. Held, Ph.D., P.E., Client Trust Account.” Held subsequently
2 will direct 75% of the initial civil penalty to OEHHA.

3 **3.1.2 Final Civil Penalty**

4 On or before June 30, 2016, CLC shall make a final civil penalty payment of \$8,000.
5 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
6 penalty payment shall be waived in its entirety if, no later than June 15, 2016, an officer of CLC
7 provides Held with written certification that it is no longer offering or distributing for sale in
8 California the Products, or is only offering for sale and distributing for sale in California,
9 Reformulated Products as defined in section 2.1, above. The option to certify reformulation in lieu of
10 making the final civil penalty payment required by this Section is a material term and time is of the
11 essence.

12 **3.2 Reimbursement of Fees and Costs**

13 The parties acknowledge that Held and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been finalized, CLC expressed a desire to resolve Held’s fees and costs.
17 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
18 counsel under general contract principles and the private attorney general doctrine codified at
19 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
20 execution of this Consent Judgment. CLC shall, on or before December 15, 2015, issue a check
21 payable to “Peg Carew Toledo, Law Corporation, in trust for CLC” in the amount of fees and costs of
22 \$24,000 to be held in trust by Peg Carew Toledo, Law Corporation for The Chanler Group. Peg
23 Carew Toledo, Law Corporation shall provide The Chanler Group with written confirmation within
24 five days of receipt that the funds have been deposited in a trust account. Within five (5) business
25 days of the Effective Date, Peg Carew Toledo, Law Corporation shall issue a check payable to “The
26 Chanler Group” to the address found in Section 3.3.1 below.

1 **3.3 Payment Procedures**

2 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
3 this Consent Judgment are to be delivered on or before January 8, 2016 to Peg Carew Toledo, Law
4 Corporation, and released to The Chanler Group and Held within five (5) business days of the
5 Effective Date according to the following subsections.

6 **3.3.1 Payment Address**

7 All payments and tax documentation for OEHHA, Held, and his counsel shall be delivered
8 to:

9 The Chanler Group
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 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 in the public interest, releases CLC and its parents,
15 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
16 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
17 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
18 franchisers, cooperative members, licensors, and licensees (“Downstream Releasees”) for violations
19 arising under Proposition 65 for unwarned exposures to DINP from the Products sold by CLC prior
20 to the Effective Date, as set forth in the Notice and Complaint.

21 **4.2 Held’s Individual Release of Claims**

22 Held, in his individual capacity only and *not* in his representative capacity, also provides a
23 release to CLC, Releasees, and Downstream Releasees which shall be effective as a full and final
24 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
26 kind, arising out of alleged or actual exposures to DINP or DEHP from the Products sold or
27 distributed for sale by CLC before the Effective Date.

1 **4.3 CLC’s Release of Held**

2 CLC, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
4 attorneys and other representatives, for any and all actions taken or statements made by Held and
5 his attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **4.4 Proposition 65 Compliance**

8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
9 65 by CLC with respect to the alleged or actual failure to warn about exposures to DINP and DEHP
10 from Products manufactured, sold or distributed by CLC after the Effective Date.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
14 has been fully executed by the Parties.

15 **6. SEVERABILITY**

16 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
17 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
18 adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
22 otherwise rendered inapplicable by reason of law generally, or as to the Products, then CLC may
23 provide written notice to Held of any asserted change in the law, and shall have no further obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
25 Nothing in this Consent Judgment shall be interpreted to relieve CLC from any obligation to comply
26 with any pertinent state or federal toxics control laws.

1 **8. NOTICE**

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

5 For CLC:

6 Peg Carew Toledo, Esq.
7 Peg Carew Toledo, Law Corporation
8 3001 Douglas Blvd., Suite 340
Roseville, California 95661

9 For Held:

10 The Chanler Group
11 Attn: Proposition 65 Coordinator
12 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or portable
17 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
18 taken together, shall constitute one and the same document.

19 **10. POST EXECUTION ACTIVITIES**

20 Held agrees to comply with the reporting form requirements referenced in Health and Safety
21 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
22 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
23 furtherance of obtaining such approval, Held and CLC agree to mutually employ their best efforts,
24 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
25 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
26 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and
27 supporting the motion for judicial approval.
28

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

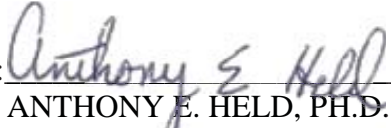
6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.

8
9 **AGREED TO:**

AGREED TO:

10 Date: 12/11/2015

Date: _____

11
12 By: 
13 ANTHONY E. HELD, PH.D., P.E.

By: _____
Ron Pickens, President
CUSTOM LEATHERCRAFT MFG. CO.,
INC.

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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


8
9 **AGREED TO:**

10 Date: _____

11
12 By: _____
13 ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

14 Date: 12/13/11

15 By: 

16 Ron Pickens, President
17 CUSTOM LEATHERCRAFT MFG. CO.,
18 INC.

19 Craig Anderson, Treasurer

20
21
22
23
24
25
26
27
28