

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.

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION
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15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 KIMBERLY-CLARK CORPORATION; *et*
19 *al.*,

20 Defendants.

Case No. CIV1502667

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

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”) and Kimberly-Clark Corporation (“Kimberly-Clark” or “Settling Defendant”), with Held and Kimberly 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 toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Kimberly-Clark 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Settling Defendant manufactures, imports, sells, or distributes for sale in California, vinyl/PVC gloves containing diisononyl phthalate (“DINP”), without first providing the exposure warning required by Proposition 65. DINP was listed on December 20, 2013 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. The warning obligations became effective one year later, on December 20, 2014.

20 **1.5 Product Description**

21 Settling Defendant’s products that are covered by this Consent Judgment are defined as vinyl/PVC gloves containing DINP including, without limitation, the *Kimberly-Clark Synthetic Powder-Free Vinyl Exam Gloves, #55033, UPC #0 36000 55033 7*, Kimberly-Clark has manufactured, or distributed, or sold and/or offered for sale in the State of California, or will manufacture, or distribute or sell and/or offer for sale in California in the future (hereinafter the “Products”).

1 **1.6 Notice of Violation**

2 On January 30, 2015, Held served Kimberly-Clark Corporation, Amazon.com and certain
3 requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that
4 Kimberly-Clark and Amazon.com violated Proposition 65 when they failed to warn their customers
5 and consumers in California that vinyl/PVC gloves expose users to DINP.

6 **1.7 Complaint**

7 On July 20, 2015 Held filed the instant action (“Complaint”), naming Kimberly-Clark as a
8 defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
9 the Notice.

10 **1.8 No Admission**

11 Settling Defendant denies the material, factual, and legal allegations contained in the Notice
12 and Complaint, and maintains that all of the products that it has sold and distributed for sale in
13 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
14 Consent Judgment shall be construed as an admission against interest of any fact, finding, conclusion
15 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
16 or be construed as an admission against interest of any fact, finding, conclusion of law, issue of law,
17 or violation of law, such being specifically denied by Kimberly-Clark. Nothing in this agreement
18 shall preclude Kimberly-Clark from asserting any and all applicable defenses available to it in any
19 future proceeding by any person under Proposition 65 or otherwise. This Section shall not, however,
20 diminish or otherwise affect Kimberly-Clark’s obligations, responsibilities, and duties under this
21 Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Settling Defendant as to the allegations in the Complaint, that venue is proper in the
25 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
26 Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date which Held
3 serves notice on Kimberly-Clark that the Court has issued an order approving this Consent Judgment.

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

5 **2.1 Reformulated Products**

6 Commencing on August 15, 2015, and continuing thereafter, Kimberly-Clark agrees either to
7 (a) manufacture for sale, or purchase for sale in California, “Reformulated Products,” or (b) all
8 Products Kimberly-Clark manufactures for sale, or purchases for sale, in California shall contain a
9 clear and reasonable warning pursuant to Section 2.2 below. Products manufactured for sale, or
10 purchased for sale, in California or to California consumers prior to August 15, 2015 may be sold
11 without a warning. For purposes of this Consent Judgment, “Reformulated Products” are products
12 that contain DINP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed
13 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
14 other methodology utilized by federal or state agencies for the purpose of determining the DINP
15 content in a solid substance.

16 **2.2 Product Warnings**

17 If required, each warning shall be prominently placed with such conspicuousness as compared
18 with other words, statements, designs, or devices as to render it likely to be read and understood by
19 an ordinary individual under customary conditions before purchase or use. Each warning shall be
20 provided in a manner such that the consumer or user understands to which *specific* Product the
21 warning applies, so as to minimize the risk of consumer confusion. Nothing in Section 2.2 or
22 elsewhere in this Agreement shall require Kimberly-Clark to supply warnings which are contrary to
23 federal law or constitute misbranding of the Products.

24 **(a) Retail Store Sales.**

25 **(i) Product Labeling.** Kimberly-Clark shall affix a warning to the packaging,
26 labeling, or directly on each vinyl/PVC glove packaging provided for sale in retail outlets in
27 California that states:
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1 catalog and/or the internet to customers located in California after August 15, 2015, Kimberly-Clark
2 shall provide warnings for such Products sold via mail order catalog or the internet to California
3 residents unless warnings are already provided pursuant to Section 2.2(a)(i). Warnings given in the
4 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
5 as further specified in Sections 2.2(b)(i) and (ii).

6 (i) **Mail Order Catalog Warning.** Any required warning provided in a mail
7 order catalog shall be in the same type size or larger than the Product description text within the
8 catalog, and shall include the same text as set forth in Section 2.2(a)(i).

9 Alternatively, where it is impracticable to provide the warning on the same page and in the
10 same location as the display and/or description of the Product, Kimberly may utilize a designated
11 symbol to cross reference the applicable warning and shall define the term "designated symbol" with
12 the following language on the inside of the front cover of the catalog or on the same page as any
13 order form for the Product(s):

14 WARNING: Certain products identified with this symbol ▼
15 and offered for sale in this catalog contain DINP,
16 a chemical known to the State of California to
17 cause cancer.

18 Or

19 WARNING: Certain products identified with this symbol ▼
20 And offered for sale in this catalogue contain
21 [a] chemical[s] known to the State of California
22 to cause cancer.

23 The designated symbol must appear on the same page and in close proximity to the display
24 and/or description of the Product. On each page where the designated symbol appears, Kimberly
25 must provide a header or footer directing the consumer to the warning language and definition of the
26 designated symbol.

27 (ii) **Internet Website Warning.** If required, a warning including the same text
28 set forth in Section 2.2(a)(i) shall be given in conjunction with the sale of the Products via the
internet, which warning shall appear either: (a) on the same web page on which a Product is
displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price

1 for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout
2 process. The warning statement shall appear in any of the above instances adjacent to or immediately
3 following the display, description, or price of the Product for which it is given in the same type size
4 or larger than the Product description text or in a separate notice during check out which requires the
5 purchaser to accept and acknowledge the notification. Alternatively, the designated symbol may
6 appear adjacent to or immediately following the display, description, or price of the Product for
7 which a warning is being given, provided that the following same warning statement set forth in
8 Section 2.2(a)(i) also appears elsewhere on the same web page, or in a separate notice during check
9 out which requires the purchaser to accept and acknowledge the notification.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Civil Penalty Payments**

12 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
13 to in this Consent Judgment, Kimberly-Clark shall pay \$3,500 in civil penalties. Kimberly-Clark
14 shall make the check payable to "Anthony E. Held, Ph.D., P.E., Client Trust Account." Held shall
15 allocate the payment according to Health and Safety Code section 25249.12(c)(1) and (d) with
16 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
17 Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds allocated to Held. Held
18 and his counsel will deliver the appropriate 75% portion of all civil penalties paid to OEHHA within
19 five (5) days of receipt.

20 **3.2 Reimbursement of Fees and Costs**

21 The parties acknowledge that Held and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
23 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
24 other settlement terms had been finalized, Kimberly-Clark expressed a desire to resolve Held's fees
25 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held
26 and his counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
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1 execution of this Consent Judgment. Under this accord Settling Defendant has agreed to pay, and
2 shall issue a check in the amount of, \$23,500, payable to "The Chanler Group."

3 **3.3 Payment Procedures**

4 All payments due under this Consent Judgment are to be sent to The Chanler Group, at the
5 address listed below in section 3.3.1, within five (5) days of the Effective Date according to the
6 following subsections.

7 **3.3.1 Payment Address**

8 All payments to Held and his counsel shall be delivered 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 all claims against
15 Kimberly-Clark and its parents, subsidiaries, predecessors, successors or assigns, affiliated entities
16 under common ownership, directors, officers, employees, and attorneys ("Releasees") and each
17 entity to whom it, or they, directly or indirectly distributed or sold the Products, including but not
18 limited to its, or their, downstream distributors, wholesalers, customers, retailers (including
19 Amazon.com), franchisers, cooperative members, licensors, and licensees ("Downstream
20 Releasees") for violations arising under Proposition 65 for unwarned exposures to DINP from the
21 Products manufactured, or distributed, or sold by or on behalf of Kimberly-Clark in California, or to
22 California consumers prior to the Effective Date.

23 **4.2 Held's Individual Release of Claims**

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

3 **4.3 Kimberly's Release of Held**

4 Kimberly-Clark, on its own behalf, and on behalf of the Releasees, hereby waives any and
5 all claims against Held and his attorneys and other representatives, for any and all actions taken or
6 statements made by Held and his attorneys and other representatives, whether in the course of
7 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
8 respect to the Products, up through the Effective Date.

9 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California
19 and apply within the state of California. This Consent Judgment does not govern Products which do
20 not result in exposures to California consumers. In the event that Proposition 65 is repealed,
21 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
22 then Kimberly-Clark may provide written notice to Held of any asserted change in the law, and shall
23 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
24 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
25 Kimberly-Clark from any obligation to comply with any pertinent state or federal toxics control laws.
26 Compliance with this Consent Judgment by Kimberly-Clark constitutes compliance with Proposition
27 65 by Kimberly-Clark, the Releasees and Downstream Releasees. For avoidance of doubt, the
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1 warnings mandated in Section 2 are not required for any Products Kimberly-Clark has manufactured
2 for sale in California, or purchased for sale in California, prior to August 15, 2015, regardless of the
3 date any such Products are sold to California consumers by any person.

4 **8. NOTICE**

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

8 For Kimberly:

9 Judith M. Praitis, Esq.
10 Sidley Austin, LLP
11 555 West Fifth Street
Los Angeles, California 90013

12 For Held:

13 The Chanler Group
14 Attn: Proposition 65 Coordinator
15 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 Held agrees to comply with the reporting form requirements referenced in Health and Safety
24 Code section 25249.7(f). Pursuant to Health and Safety Code section 25249.7(f), a noticed motion is
25 required to obtain judicial approval of the settlement, which motion Held shall draft and file.

26 Kimberly-Clark agrees to support approval of this Consent Judgment.
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1 **11. DISPUTE RESOLUTION**

2 If either Party determines at a future date that a violation of this Consent Judgment has
3 occurred, such Party shall provide notice to the other Party. Prior to bringing any action to enforce
4 any requirement of this Consent Judgment, the Party alleging a violation shall provide the other Party
5 with written notice of the grounds for such allegation together with all supporting information as well
6 as a complete demand for the relief sought. The Parties shall then meet and confer regarding the
7 allegation in an attempt to resolve the matter informally. Should such attempts at informal resolution
8 fail, the Party alleging a violation may file its lawsuit, or any other available remedy at law, seeking
9 the proposed relief no less than 30 days after the Party alleging a violation of this Consent Judgment
10 provided the other Party with written notice of the grounds for such allegation.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
13 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
14 Party, and the entry of a modified consent judgment by the Court. Except as set forth in the next
15 sentence, nothing precludes either Party from filing, or contesting, any motion to modify this Consent
16 Judgment. If Held agrees in a subsequent court approved consent judgment governing products like
17 the Products to a different Reformulation Standard, or if a court determines that a standard other than
18 the Reformulation Standard herein is the applicable standard for whether a warning under Proposition
19 65 is required for products like the Products, or if DINP is de-listed from the Proposition 65 list of
20 chemicals, then Kimberly-Clark may move to modify this Consent Judgment to include such new
21 standard or, in the case of de-listing, to terminate the injunctive terms of this Consent Judgment, and
22 Held shall not oppose such motion.

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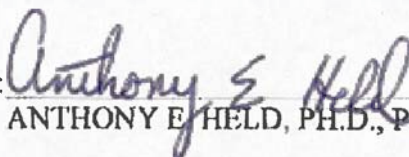
1 **13. AUTHORIZATION**

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

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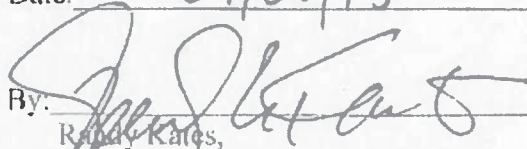
AGREED TO:

Date: 9/10/15

By: 
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

Date: 09/08/15

By: 
Randy Kafes,
Global Scientific Senior Director
Kimberly-Clark Professional