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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

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

17 Plaintiff,

18 v.

19 KRAFT TOOL COMPANY; *et al.*,

20 Defendants.

Case No. CGC 17-556311

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)



1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”) and defendant Kraft Tool Company (“Kraft”), with Held and Kraft each referred to
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Kraft employs ten (10) 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, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Kraft manufactures, imports, sells and/or distributes for sale in California,
16 tools with vinyl/PVC grips containing the phthalate chemical diisononyl phthalate (“DINP”), and that
17 it does so without providing the health hazard warning required by Proposition 65.

18 **1.5 Listed Phthalate Chemicals**

19 DINP is a phthalate chemical listed under Proposition 65 as a chemical known to the
20 State of California to cause cancer. Other phthalate chemicals listed under Proposition 65 as
21 chemicals known to the State of California to cause cancer include, but are not limited to, di(2-
22 ethylhexyl) phthalate (“DEHP”), DEHP, di-isodecyl phthalate (“DIDP”), butyl benzyl phthalate
23 (“BBP”), and di-n-butyl phthalate (“DBP”) are listed under Proposition 65 as chemicals known to
24 the State of California to cause birth defects or other reproductive harm. DINP, DEHP, DBP,
25 DDP, and DIDP are collectively referred to herein as the “Phthalate Chemicals.”
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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are tools with vinyl/PVC grips containing
3 DINP that are distributed for sale in California by Kraft, including, but not limited to, the *Kraft Tool*
4 *Lathing Snips, LA292, UPC #7 65139 85292 9* (collectively, "Products"). Kraft has also distributed
5 for sale in California a variety of additional tools with vinyl/PVC grips which contain other Phthalate
6 Chemicals (collectively, "Additional Products").

7 While Additional Products are not the subject of Held's Notice, and are not being released
8 by the public in California pursuant to Section 4.1, below, the Parties agree and understand that
9 Held will provide privately, in his individual capacity only, releases to Kraft for the failure to warn
10 about exposures to Phthalate Chemicals in "Additional Products" pursuant to Section 4.2, below, in
11 exchange for Kraft's commitment to ensure that the Additional Products comply with the
12 reformulation standards and health hazard warning requirements set forth in Section 2, below.

13 **1.7 Notice of Violation**

14 On September 29, 2016, Held served Kraft and the requisite public enforcement agencies
15 with a 60-Day Notice of Violation ("Notice"), alleging that Kraft violated Proposition 65 when it
16 failed to warn its customers and consumers in California that the Products expose users to DINP.
17 No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations
18 set forth in the Notice.

19 **1.8 Complaint**

20 On January 9, 2017, Held commenced the instant action, naming Kraft as a defendant for
21 the alleged violations of Proposition 65 that are the subject of the Notice.

22 **1.9 No Admission**

23 Kraft denies the material, factual, and legal allegations contained in the Notice and
24 Complaint, and maintains that all the products that it has sold or distributed for sale in California,
25 including the Products and Additional Products, have been, and are, in compliance with all laws.
26 Nothing in this Consent Judgment shall be construed as an admission by Kraft of any fact, finding,
27 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
28 Judgment constitute or be construed as an admission by Kraft of any fact, finding, conclusion of

1 law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect
2 Kraft's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.10 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Kraft as to the allegations contained in the Complaint, that venue is proper in the
6 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
7 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.11 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
10 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
11 approval.

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

13 **2.1 Commitment to Reformulate or Warn**

14 Commencing on the Effective Date and continuing thereafter, Kraft shall only manufacture
15 for sale, purchase for sale, or distribute for sale in California, Products that are either: (a)
16 Reformulated Products as defined by Section 2.2, below; or (b) Products that are sold, distributed
17 for sale, or offered for sale by Kraft with a clear and reasonable warning pursuant to Section 2.3.


18 **2.2 Reformulation Standard**


19 For the purposes of this Consent Judgment, "Reformulated Products" are defined as
20 Products that contain DINP or any of the Phthalate Chemicals in a concentration that does not
21 exceed 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
22 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized
23 by federal or state agencies to determine DINP or any of the Phthalate Chemical content in a solid
24 substance.

25 **2.3 Clear and Reasonable Warning**

26 Commencing on the Effective Date and continuing thereafter, for any Products or
27 Additional Products offered for sale in California by Kraft that are not Reformulated Products,
28 Kraft agrees to only offer such Products or Additional Products for sale with a clear and reasonable

1 warning. Kraft further agrees that any warning used will be prominently placed in relation to the
2 Products or Additional Products with such conspicuousness when compared with other words,
3 statements, designs, or devices as to render it likely to be read and understood by an ordinary
4 individual under customary conditions of purchase or use. For purposes of this Consent Judgment,
5 a clear and reasonable warning satisfying these criteria shall consist of a warning affixed directly to
6 a Product, Additional Product, or its accompanying labeling or packaging sold in California
7 containing one of the following statements:

8
9  **WARNING:** Cancer and Reproductive Harm-
10 www.Prop65Warning.ca.gov.

11  **WARNING:** This product can expose you to chemicals which
12 are known to the State of California to cause cancer and
13 birth defects or other reproductive harm.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
16 claims referred to in this Consent Judgment, Kraft shall pay \$2,500 in civil penalties in accordance
17 with this Section. Each penalty payment will be allocated in accordance with California Health &
18 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
19 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
20 remitted to Held. Held’s counsel shall be responsible for remitting Kraft’s penalty payment(s)
21 under this Consent Judgment to OEHHA. Kraft shall provide its payment in two checks for the
22 following amount made payable to (a) “OEHHA” in the amount of \$1,875; and (b) “Anthony E.
23 Held, Client Trust Account” in the amount of \$625. Held’s counsel shall be responsible for
24 delivering OEHHA’s portion of any penalty payment(s) made under this Consent Judgment.
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1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
4 to be resolved after the material terms of the agreement had been settled. Shortly after the other
5 settlement terms had been finalized, Kraft expressed a desire to resolve Held's fees and costs. The
6 Parties then negotiated a resolution of the compensation due to Held and his counsel under general
7 contract principles and the private attorney general doctrine codified at California Code of Civil
8 Procedure § 1021.5. For all work performed through the mutual execution of this agreement and
9 the Court's approval of the same, but exclusive of fees and costs on appeal, if any, Kraft shall
10 reimburse Held and his counsel \$28,000. Kraft's payment shall be delivered to the address in
11 Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall
12 cover all fees and costs incurred by Held investigating, bringing this matter to Kraft's attention,
13 litigating, and negotiating a settlement of the matter in the public interest.

14 **3.3 Payment Timing; Payments Held In Trust**

15 Kraft shall deliver all payments required by this Consent Judgment to its counsel within one
16 week of the date that this agreement is fully executed by the Parties. Kraft's counsel shall confirm
17 receipt of settlement funds in writing to Held's counsel and, thereafter, hold the amounts paid in
18 trust until and disburse the Settlement Funds to Held's counsel within two (2) business days of the
19 Effective Date.

20 **3.4 Payment Address**

21 Within two business days of the Effective Date, all payments required by this Consent
22 Judgment shall be delivered to:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held's Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest, releases Kraft and their parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
6 Products including, but not limited to, their downstream distributors, wholesalers, customers,
7 retailers, franchisors, cooperative members, licensors, licensees, and shareholder ("Downstream
8 Releasees") for any violation arising under Proposition 65 for unwarned exposures to DINP from
9 Products manufactured, imported, distributed or sold by Kraft prior to the Effective Date, as set
10 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
11 with Proposition 65 by Kraft with respect to the alleged or actual failure to warn about exposures to
12 DINP from Products manufactured, sold or distributed for sale by Kraft after the Effective Date.

13 **4.2 Plaintiff's Release of Additional Claims**

14 Held, in his individual capacity only and not in his representative capacity, also
15 provides a release to Kraft, its Releasees, and its Downstream Defendant Releases which shall be
16 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
17 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
18 Held of any nature, character or kind, whether known or unknown, suspected or unsuspected,
19 arising out of alleged or actual exposures to the DINP or any of the Phthalate Chemicals in the
20 Products or Additional Products acquired, distributed, or sold by Kraft before the Effective Date.
21 Kraft's compliance with the terms of Section 2 of this Consent Judgment constitutes compliance with
22 Proposition 65 with respect to the failure to warn about exposures to DINP or any of the Phthalate
23 Chemicals in Products or Additional Products.

24 **4.3 Held's Individual Release of Claims**

25 Held, in his individual capacity only and *not* in his representative capacity, also provides a
26 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
27 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
28 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or



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1 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to DINP in Products manufactured, imported, distributed or sold by Kraft before the
3 Effective Date.

4 **4.4 Kraft's Release of Held**

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

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by the Parties. Held and Kraft agree to support the entry of this
14 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
15 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
16 noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall
17 draft and file and Kraft shall support, including by appearing at the hearing if so requested. If any
18 third-party objection to the motion is filed, Held and Kraft agree to work together to file a reply and
19 appear at any hearing. This provision is a material component of the Consent Judgment and shall
20 be treated as such in the event of a breach.

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
28 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Kraft may

1 provide Held with written notice of any asserted change in the law, and shall have no further
2 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
3 are so affected. Kraft may, in its sole discretion, provide warnings for the Products in accordance
4 with Title 27, California Code of Regulations, Sections 25603, which was adopted on August 30,
5 2016. Nothing in this Consent Judgment shall be interpreted to relieve Kraft from its obligation to
6 comply with any pertinent state or federal law or regulation.

7 **8. NOTICE**

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

12 To Kraft:

13 S. Wayne Rosenbaum, Esq.
14 Environmental Law Group LLP
15 225 Broadway, 19th Floor
16 San Diego, CA 92101

To Held:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

23 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

24 Held and his counsel agree to comply with the reporting form requirements referenced in
25 California Health and Safety Code section 25249.7(f).
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1 **11. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
4 any party and the entry of a modified Consent Judgment by the Court thereon.

5 **12. AUTHORIZATION**

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

9 **AGREED TO:**

10 Anthony E. Held
11 ANTHONY E. HELD, PH.D., P.E.

12 Dated: 10/24/2017

AGREED TO:

Ronald G. Meyer
Kraft Tool Co.
KRAFT TOOL COMPANY

By: RONALD G. MEYER
(Print Name)
Its: President
(Title)

Dated: 10/18/17

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