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16 Attorneys for Defendant
17 LEHIGH CONSUMER PRODUCTS LLC

18
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 CITY AND COUNTY OF SAN FRANCISCO
21 UNLIMITED CIVIL JURISDICTION
22

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

24 Plaintiff,

25 v.

26 LEHIGH CONSUMER PRODUCTS LLC; *et*
27 *al.*,

28 Defendants.

Case No. CGC-16-552602

[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 Lehigh Consumer Products LLC (“Lehigh”), with Held and Lehigh 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 Lehigh 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 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Lehigh 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 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 Lehigh’s products that are covered by this Consent Judgment are defined as vinyl/PVC gloves containing DINP including, without limitation, the *Spontex ColorBrite Disposable Gloves, UPC #0 21202 76153 7*, which are manufactured, imported, distributed, sold and/or offered for sale by Lehigh in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

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

1 **1.7 Complaint**

2 On or about June 15, 2016, Held filed the instant action (“Complaint”), naming Lehigh as
3 defendant for its alleged violations of Health and Safety Code § 25249.6 that are the subject of the
4 Notice.

5 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Lehigh as to the allegations in the Complaint, that venue is proper in the County of
17 San Francisco, 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 which the
21 Court approves this Consent Judgment, including any unopposed tentative rulings.

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

23 **2.1 Reformulated Products**

24 Commencing on October 30, 2016, and continuing thereafter, Lehigh shall only purchase for
25 sale, manufacture for sale or import for sale in California “Reformulated Products,” or Products that
26 are sold with a clear and reasonable warning pursuant to Section 2.2 below. For purposes of this
27 Consent Judgment, “Reformulated Products” are products that contain DINP in concentrations of less
28 than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection

1 Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or
2 state agencies for the purpose of determining the DINP content in a solid substance.

3 **2.2 Product Warnings for Retail Store Sales**

4 Commencing on August 31, 2016, Lehigh shall provide clear and reasonable warnings for all
5 Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have warnings
6 and that do not qualify as Reformulated Products. Each warning shall be prominently placed with
7 such conspicuousness as compared with other words, statements, designs, or devices as to render it
8 likely to be read and understood by an ordinary individual under customary conditions before
9 purchase or use. Each warning shall be provided in a manner such that the consumer or user
10 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
11 confusion. To the extent Lehigh has existing inventory that contain clear and reasonable warnings
12 with the alternative language, "CALIFORNIA PROP 65 WARNING: This product contains
13 chemicals known to the State of California to cause cancer and birth defects or other productive
14 harm.", to that set forth in 2.2(a), Lehigh shall be entitled to sell through such inventory.

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

18 **WARNING:** This product can expose you to DINP which is
known to the State of California to cause cancer.¹

19 - or -

20 **WARNING:** This product contains a chemical known to the
21 State of California to cause cancer and birth
defects or other reproductive harm.

22 (b) **Point-of-Sale Warnings.** Alternatively, Lehigh may provide warning signs in
23 the form below to its customers in California with instructions to post the warnings in close proximity
24 to the point of display of the Products. Such instruction sent to Lehigh customers shall be sent by

25 _____
26 ¹ A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
27 black outline. Where the sign, label or labeling for the product is not printed using the color yellow,
28 the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the
warning, in a size no smaller than the height of the word "WARNING".

(Footnote continues on next page.)

1 certified mail, return receipt requested.

2 **WARNING:** This product can expose you to DINP which is
3 known to the State of California to cause cancer.²

4 - or -

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

8 Where more than one Product is sold in proximity to other like items or to those that do not
9 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
10 shall be used:³

11 **WARNING:** The following products can expose you to DINP
12 which is known to the State of California to cause
13 cancer:⁴

14 [*list products for which warning is required*]

15 - or -

16 **WARNING:** The following products contain a chemical known
17 to the State of California to cause cancer and birth
18 defects or other reproductive harm:

19 [*list products for which warning is required*]

20 ///

21 ///

22 ///

23 ///

24 ² A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
25 black outline. Where the sign, label or labeling for the product is not printed using the color yellow,
26 the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the
27 warning, in a size no smaller than the height of the word "WARNING".

28 ³ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and
29 another similar product are offered for sale close enough to each other that the consumer, under
30 customary conditions of purchase, could not reasonably determine which of the two products is
31 subject to the warning sign.

32 ⁴ A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
33 black outline. Where the sign, label or labeling for the product is not printed using the color yellow,
34 the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the
35 warning, in a size no smaller than the height of the word "WARNING".

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code § 25249.7(b), in settlement of all the claims referred to in
4 this Consent Judgment, Lehigh shall pay \$42,000 in civil penalties. Held shall allocate each civil
5 penalty payment as set forth in Sections 3.1.1 and 3.1.2 according to Health and Safety Code §
6 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of
7 Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%)
8 of the funds remitted to Held.

9 **3.1.1 Initial Civil Penalty**

10 Within ten (10) business days of the Effective Date and following Held providing all
11 applicable W-9 forms to Lehigh, Lehigh shall issue a check to “Anthony E. Held, Ph.D., P.E., Client
12 Trust Account” in the amount of \$14,000. Held subsequently will direct 75% of the initial civil
13 penalty to OEHHA.

14 **3.1.2 Final Civil Penalty**

15 On or before November 30, 2016, Lehigh shall make a final civil penalty payment of \$28,000.
16 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
17 penalty payment shall be waived in its entirety if, no later than October 30, 2016, an officer of Lehigh
18 provides Held with written certification that all of the Products distributed, shipped, sold and offered
19 for sale in California, as of the date of the certification, are Reformulated Products as defined by
20 Section 2.1, and that Lehigh will continue to offer only Reformulated Products in California in the
21 future. The option to certify reformulation in lieu of making the final civil penalty payment required
22 by this Section is a material term and time is of the essence. Unless waived, Lehigh shall issue a
23 check for its final civil penalty payment to “Anthony E. Held, Ph.D., P.E., Client Trust Account.”

24 **3.2 Reimbursement of Fees and Costs**

25 The parties acknowledge that Held and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, Lehigh expressed a desire to resolve Held’s fees and costs.

1 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
2 counsel under general contract principles and the private attorney general doctrine codified at
3 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
4 this Consent Judgment and anticipated up to the entry of judgment pursuant to the terms of this
5 Consent Judgment. Under these legal principles, Lehigh shall pay the amount of \$36,000 to
6 reimburse Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter,
7 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
8 Court's approval of this Consent Judgment in the public interest. Within ten (10) days of the
9 Effective date and Held providing all applicable W-9 forms, Lehigh shall issue a check payable to
10 "The Chanler Group" in the amount of \$36,000.

11 **3.3 Payment Address**

12 All payments due under this Consent Judgment and tax documentation for OEHHA, Held,
13 and his counsel shall be delivered to:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held's Public Release of Proposition 65 Claims**

19 Held, acting on his own behalf and in the public interest, releases Lehigh and its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
21 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
22 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
23 franchisers, cooperative members, licensors, and licensees, including but not limited to CVS,
24 ("Downstream Releasees") for violations arising under Proposition 65 for unwarned exposures to
25 DINP from the Products sold by Lehigh prior to the Effective Date, as set forth in the Notice.

26 **4.2 Held's Individual Release of Claims**

27 Held, in his individual capacity only and *not* in his representative capacity, also provides a
28 release to Lehigh, Releasees, and Downstream Releasees which shall be effective as a full and final

1 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
3 kind, arising out of alleged or actual exposures to DINP from the Products sold or distributed for sale
4 by Lehigh before the Effective Date.

5 **4.3 Lehigh's Release of Held**

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

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 Lehigh 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 Lehigh from any obligation to
26 comply with any pertinent state or federal toxic control laws.

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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 Lehigh:

6 Elizabeth V. McNulty
7 Taylor Anderson LLP
8 19100 Von Karman Ave, Suite 820
Irvine, CA 92612

For Held:

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

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

15 **10. POST EXECUTION ACTIVITIES**

16 Held agrees to comply with the reporting form requirements referenced in Health and Safety
17 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
18 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
19 of obtaining such approval, Held and Lehigh agree to mutually employ their best efforts, and that of
20 their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of
21 their settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a
22 minimum, cooperating with the drafting and filing of the necessary moving papers, and supporting
23 the motion for judicial approval.

24 **11. MODIFICATION**

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

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1 **12. 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.

4
5 **AGREED TO:**

6 Date: September 26, 2016

7
8 *Anthony E Held*
9 By: _____
10 Anthony E. Held, Ph.D., P.E.

5 **AGREED TO:**

6 Date: 9/26/2016

7
8 *Marc P Clements*
9 By: _____
10 Marc P. Clements, VP – Litigation and
11 Regulatory
12 Lehigh Consumer Products LLC

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