

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
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 PERSON & COVEY, INC.; *et al.*,)

16 Defendants.)

Case No. CIV 1503495

[PROPOSED] CONSENT JUDGMENT

Action Filed: September 23, 2015

17)
18)
19)
20 WHEREAS Plaintiff has issued a Notice and filed a Complaint against Person & Covey,
21 Inc. regarding the presence of benzophenone in Covered Products, as further described in this
22 Consent Judgment; and

23 WHEREAS the Parties acknowledge that the Notice to Person & Covey, Inc. was intended
24 to cover all of defendant's Covered Products; and
25
26
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28

1 WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding
2 benzophenone in Person & Covey’s products that are labeled as having a Sun Protection Factor
3 Value¹ (“**SPF Products**”), they hereby agree as follows:

4 **1. INTRODUCTION**

5 **1.1 Parties**

6 This consent judgment (“**Consent Judgment**”) is entered into by and between plaintiff
7 Anthony E. Held, Ph.D., P.E. (“**Dr. Held**” or “**Plaintiff**”) and Person & Covey, Inc. (“**P&C**”) with
8 Dr. Held and P&C collectively referred to as the “Parties” and individually as a “Party.”

9 **1.2 Plaintiff**

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

13 **1.3 Person & Covey, Inc. and Benzophenone**

14 P&C manufactures, and/or distributes, and/or sells SPF Products, including sunscreen
15 products. One ingredient used in such products to enhance their ability to provide protection from
16 the sun is octocrylene, an active ingredient approved for use in sunscreens by the Federal Food &
17 Drug Administration (“**FDA**”).² Octocrylene can at times contain benzophenone. Benzophenone
18 (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic Enforcement Act
19 of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as “**Proposition**
20 **65**”) as a chemical “known to the state to cause cancer” as Proposition 65 defines that phrase. 27
21 Cal. Code Reg. § 25000.

22 **1.4 Products Covered**

23 This Consent Judgment covers and applies to all SPF Products, including but not limited to
24 sunscreen, that are manufactured and/or distributed for sale in California and/or sold in California
25 and that contain benzophenone. All sizes, types, brands, packaging, formulations, delivery forms
26 (e.g., sprays or lotions applied by hand), intended uses (e.g., “faces,” children’s products, “sport,”
27

28 ¹ This term as used herein is defined at 21 C.F.R. § 352.3.

² See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 “moisturizing,” cosmetic purposes) are included, such as the *SolBar PF Cream 50 Sunscreen*
2 *Broad Spectrum UVB & UVA Sun Protection, NDC 0096-0686-04, UPC #3 00960 68604 8*
3 (“**Covered Products**”). The Parties agree that the Notice to P&C covers all of P&C’s Covered
4 Products. This Consent Judgment, and all of its terms, applies to all Covered Products, including
5 without limitation new products and brands introduced, developed, or acquired in the future by
6 P&C which would today meet the definition of Covered Products if they currently were being
7 manufactured or distributed for sale, or being sold, in California. The term Covered Product, as
8 used hereafter in this Consent Judgment, includes such future products and brands.

9 **1.5 General Allegations**

10 Plaintiff alleges in the Complaint that P&C manufactured, and/or distributed for sale in
11 California, and/or sold in California, Covered Products containing benzophenone without “a clear
12 and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Plaintiff
13 asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future
14 and to settle Plaintiff’s alleged claims.

15 **1.6 Notice of Violation**

16 On June 26, 2015, Plaintiff served P&C and the requisite public enforcement agencies with
17 a 60-Day Notice of Violation (“**Notice**”), alleging that P&C was in violation of Proposition 65 for
18 failing to warn consumers in California that its Sunscreens exposed users to benzophenone. To the
19 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
20 allegations set forth in any of the Notice.

21 **1.7 Complaint**

22 On September 23, 2015, Plaintiff filed a complaint in the Superior Court in and for the
23 County of Marin against Person & Covey, Inc. and DOES 1-150, alleging violations of California
24 Health & Safety Code § 25249.6, based on exposures to benzophenone contained in certain
25 sunscreens sold by P&C in the State of California, *Held v. Person & Covey, Inc., et al.*, Case No.
26 CIV1503495 (the “**Complaint**”).

1 **1.8 No Admission**

2 P&C denies all the respective material, factual, and legal allegations contained in the Notice
3 and Complaint. P&C maintains that all of its Covered Products have been and are in compliance
4 with all laws. Nothing in this Consent Judgment shall be construed as an admission against interest
5 by P&C of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with
6 this Consent Judgment constitute or be construed as an admission against interest by P&C of any
7 fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish
8 or otherwise affect P&C’s obligations, responsibilities, and duties under this Consent Judgment.

9 **1.9 Consent to Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over P&C as to the allegations in the Complaint, that venue is proper in the County of
12 Marin, P&C agrees that it employs or has employed ten or more persons during time periods
13 relevant to the Complaint and that this Court has jurisdiction over the Parties to enter and enforce
14 the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
15 § 664.6.

16 **1.10 Effective Date**

17 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
18 this Consent Judgment is approved and entered by the Court.

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

20 **2.1 Reformulation Standard**

21 (a) Whereas, P&C, based on inquiry for purposes of this Consent Judgment, has not
22 identified any ingredient in its Covered Products other than octocrylene that is a source of
23 detectable benzophenone in such Covered Products. Further, based upon inquiry for purposes of
24 this Consent Judgment, P&C represents that it has investigated and concluded that there are only a
25 few major suppliers of octocrylene for the domestic market and that time and phasing is needed for
26 the marketplace of octocrylene suppliers to make the adjustments necessary to deliver octocrylene
27 with benzophenone meeting the Octocrylene Reformulation Standards.

1 (b) As of June 1, 2018, P&C shall only manufacture, or cause to be manufactured, either
2 Covered Products containing no more than (i) 50 parts per million (“ppm”) benzophenone in the
3 finished Covered Products; or (ii) 500 ppm of benzophenone in the ingredient octocrylene used in
4 the finished Covered Products. These first standards are interim standards.

5 (c) As of June 1, 2020, P&C shall only manufacture or cause to be manufactured, either
6 Covered Products containing no more than (i) 35 ppm benzophenone in the finished Covered
7 Product; or (ii) 350 ppm of benzophenone in the ingredient octocrylene used in the finished
8 Covered Products. These second standards are the “**Final Reformulation Standards.**”

9 (d) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) and
10 (c) shall be referred to collectively as the “**Reformulation Standards,**” consisting of either the
11 Sections 2.1 (b)(i) and (c)(i) (the “**Finished Product Reformulation Standards**”) or Sections 2.1
12 (b)(ii) and (c)(ii) (the “**Octocrylene Reformulation Standards**”). P&C may at any time, at its own
13 election, comply with either, both, or any combination of the applicable Finished Product
14 Reformulation Standard or the Octocrylene Reformulation Standard with respect to any Covered
15 Product.

16 (e) The Reformulation Standards shall apply to Covered Products which are
17 manufactured by or on behalf of P&C on or after the applicable Reformulation Standard dates.

18 **2.2. Notification**

19 P&C shall provide, no later than December 31, 2016, written notice (the “**Octocrylene**
20 **Supplier Letter**”) to its current respective octocrylene supplier or suppliers, informing said supplier
21 or suppliers of the Octocrylene Reformulation Standard and urging each supplier to use reasonable
22 efforts to provide expeditiously only octocrylene which complies with the Octocrylene
23 Reformulation Standard. P&C shall not include statements in the Octocrylene Supplier Letter that
24 will encourage a supplier to delay compliance with the Octocrylene Reformulation Standard.

1 **2.3 Compliance with Reformulation Standard**

2 (a) P&C electing to meet the Finished Product Reformulation Standard may, at its
3 option, either (i) test the Covered Product pursuant to a scientifically appropriate application of U.S.
4 Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically
5 appropriate methodology for determining the benzophenone content in a substance of the form of
6 the specific Covered Product being tested, or (ii) may use the appropriate mathematical calculation
7 based on octocrylene percentage in the Covered Product and the benzophenone concentration in the
8 lot of octocrylene used in the finished Covered Product, based either on testing of the octocrylene
9 lot or on a certificate of analysis documenting benzophenone content from the octocrylene supplier
10 (the “**Certificate of Analysis**”) at the option of P&C.

11 (b) P&C electing to meet the Octocrylene Reformulation Standard shall obtain a
12 Certificate of Analysis or analytical testing report for each lot of octocrylene used in the
13 manufacture of Covered Products. If, after P&C has advised its octocrylene suppliers to include a
14 Certificate of Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to
15 include a Certificate of Analysis, P&C may correct the lapse upon discovery.

16 (c) P&C may, absent grounds to question the accuracy, demonstrate compliance with
17 either Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate of
18 Analysis or comparable verified quantitative benzophenone content information. Such good faith
19 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene
20 suppliers shall rely on any scientifically appropriate testing methodology for determining the
21 benzophenone content of octocrylene.

22 (d) P&C shall retain compliance documentation for three years after delivery of a lot of
23 octocrylene and compliance documentation shall be made available within 30 days of a written
24 request by Plaintiff, who may make no more than two such requests annually.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code section 25249.7(b), P&C shall pay initial civil penalties
4 and, if applicable, final civil penalties in the amount of up to \$30,000. The penalty payments shall
5 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
6 penalty amount paid to the California Office of Environmental Health Hazard Assessment
7 (“OEHHA”) and the remaining 25% of the penalty paid to Dr. Held. Dr. Held’s counsel shall be
8 responsible for remitting P&C’s penalty payment(s) under this Settlement Agreement to OEHHA.
9 Each penalty payment shall be made to “The Chanler Group, Anthony E. Held Client Trust
10 Account” and remitted to the address indicated in Section 3.3 below.

11 **3.1.1 Initial Civil Penalty.** Within five (5) business days of the Effective Date
12 P&C shall issue a check payable to “The Chanler Group, Anthony E. Held Client Trust Account” in
13 the amount of \$10,000.

14 **3.1.2 Final Civil Penalty.** On or before June 30, 2018, P&C shall pay a final civil
15 penalty (the “**Final Civil Penalty**”) in the amount of \$20,000. However, the Final Civil Penalty
16 shall be waived in its entirety if P&C certifies that all Covered Products subject to this Consent
17 Judgment manufactured by or on behalf of P&C on or after June 1, 2018, meets a Final
18 Reformulation Standard. A responsible official with personal knowledge, after due inquiry, of
19 P&C that has exercised this election shall provide Plaintiff with a written certification confirming
20 compliance with the above conditions on or before June 15, 2018.

21 **3.1.3 Octocrylene Supplier Letter Content.** If P&C does not include a statement
22 in its Octocrylene Supplier Letter requesting that its supplier use commercially reasonable efforts to
23 achieve an Octocrylene Reformulation Standard of 200 ppm by June 1, 2020, it shall owe an
24 additional \$10,000.00 in civil penalties, due within five (5) business days of the Effective Date, to
25 be allocated and paid as set forth in Section 3.1 of this Consent Judgment. P&C shall remit a copy
26 of its Octocrylene Supplier Letter to Dr. Held no later than January 15, 2017, to the address
27 provided in Section 3.3 below, in order for Dr. Held to ascertain whether or not the \$10,000.00
28 penalty shall be waived.

1 **3.2 Reimbursement of Fees and Costs**

2 The Parties acknowledge that Dr. 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, P&C expressed a desire to resolve Dr. Held’s fees and costs.
6 P&C agrees to pay Dr. Held and his counsel under the private attorney general doctrine codified at
7 California Code of Civil Procedure section 1021.5, for all work performed through the mutual
8 execution of this agreement, including without limitation the fees and costs incurred as a result of
9 investigating, bringing this matter to P&C’s attention, negotiating a settlement, and seeking court
10 approval of the same. P&C agrees to pay \$35,000 in fees and costs within five (5) business days of
11 the Effective Date in the form of a check made payable to “The Chanler Group.”

12 **3.3 Payment Procedures**

13 All payments under this Consent Judgment 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 Plaintiff’s Public Release of Proposition 65 Claims**

19 This Consent Judgment is a full, final and binding resolution of all claims that were or could
20 have been asserted in the Complaint arising out of P&C’s alleged failure to provide Proposition 65
21 warnings for exposures to benzophenone in their respective Covered Products. Plaintiff, acting on
22 his own behalf and in the public interest, releases P&C and its respective parents, subsidiaries,
23 affiliated entities under (full or partial) common ownership, manufacturers, suppliers and the
24 directors, officers, employees, attorneys, and predecessors, successors or assigns of each of them
25 (“**Releasees**”) and each entity to whom P&C directly or indirectly distributes or sells the Covered
26 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
27 franchisers, cooperative members, licensors and licensees, and including any and all subsidiaries,
28 parents, marketplace retailers and/or affiliates of the retailers (collectively, the “**Distribution Chain**

1 **Releasees**”) for violations arising under Proposition 65 for unwarned exposures to benzophenone
2 from the Covered Products sold by P&C prior to the Effective Date. Dr. Held’s release of claims
3 applies to all Covered Products which P&C (or its manufacturer) either manufactured, and/or
4 distributed and/or sold prior to the Effective Date, regardless of the date P&C distributes or sells the
5 subject Covered Products.

6 Upon entry of this Consent Judgment by the Court, going forward, P&C’s compliance with
7 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
8 with respect to benzophenone in P&C’s prior, current and future Covered Products.

9 **4.2 Dr. Held’s Individual Release of Claims**

10 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
11 a release to P&C, Releasees, and Distribution Chain Releasees, which release shall be effective as a
12 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
13 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr. Held of any
14 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
15 alleged or actual exposures to benzophenone in P&C’s Covered Products prior to the Effective
16 Date.

17 **4.3 Person & Covey, Inc.’s Release of Dr. Held**

18 P&C, on behalf of itself, its past and current agents, representatives, attorneys, successors
19 and assignees, hereby waives any and all claims against Dr. Held and his attorneys and other
20 representatives, for any and all actions taken or statements made by Dr. Held and his attorneys and
21 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
22 Proposition 65 against it in this matter, or with respect to the Covered Products up through the
23 Effective Date.

24 **5. FORCE MAJEURE**

25 In the event that it is not feasible for P&C to obtain conforming octocrylene necessary so as
26 to comply with any Reformulation Standard due to an Act of God (including fire, flood, earthquake,
27 storm, hurricane or other natural disaster) or loss of adequate supplier ability to supply octocrylene
28 on an uninterrupted basis compliant with the applicable Octocrylene Reformulation Standard, the

1 provisions of this paragraph will dictate whether the applicable dates for meeting the Reformulation
2 Standards for P&C shall be extended. The criteria for determining whether it is feasible to obtain
3 conforming octocrylene shall include the following factors: availability and reliability of supply
4 that meets the applicable Octocrylene Reformulation Standard, cost of such conforming octocrylene
5 and resulting increase in manufacturers' prices resulting from the use of conforming octocrylene,
6 performance characteristics of conforming octocrylene and of the resulting Covered Products,
7 including but not limited to formulation, performance, safety, efficacy, consumer acceptance, and
8 stability.

9 P&C shall provide notice to Plaintiff and included in the notice shall be the specific reason
10 or reasons for invoking the Force Majeure clause, along with a reasonable estimate of the time
11 period during which P&C will be unable to comply with the applicable Reformulation Standard.
12 During the time invoked by P&C, the Reformulation Standard shall be revised to 100 ppm for the
13 Finished Product Reformulation Standard and 1,000 ppm for the Octocrylene Reformulation
14 Standard.

15 If the Parties disagree as to whether P&C has a valid reason to invoke the Force Majeure
16 clause or disagree as to the length of time necessary for P&C to comply with the Reformulation
17 Standard, they shall attempt to resolve their differences through one or more sessions with a
18 mediator as mutually agreed to by the Parties or, if necessary, as referred by the Court. Dr. Held's
19 reasonable fees and costs of the mediation sessions under this Section shall be borne solely P&C
20 unless otherwise allocated by the mediator, who shall consider whether mediation was necessary
21 and/or whether a Party asserted unreasonable or extreme positions. If the Parties cannot reach
22 resolution via a meet and confer or the mediator process, an aggrieved Party may move the Court
23 via a noticed motion on all Parties, with a copy to the Office of the Attorney General, for such
24 additional relief as that Party deems necessary.

25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
28

1 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
2 writing.

3 **7. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
5 Judgment is held by a court to be void or unenforceable, or any Parties agree to modify any terms
6 due to input from the Office of the Attorney General or after a hearing before the Court in
7 connection with Dr. Held's Motion to Approve, or for other good cause, each Party to be bound by
8 any such modified terms must re-execute the modified Consent Judgment and such modified
9 Consent Judgment then shall be presented to the Court for approval by Dr. Held; provided,
10 however, that if a provision of this Consent Judgment declared void or unenforceable is material to
11 the Party for whom such term provided a benefit or protection, that Party can seek other remedies,
12 including, without limitation, rescission or reformation, based on the provision being declared void
13 or unenforceable.

14 **8. GOVERNING LAW**

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

23 **9. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR BENZOPHENONE**

24 If FDA adopts new regulations or Congress enacts new laws governing octocrylene and/or
25 benzophenone content in any Covered Products, then the Parties shall meet and confer regarding the
26 effect of such changes in the law on the obligations of this Consent Judgment. If necessary to reach
27 agreement, the Parties may refer any specific issue for consideration by a mediator agreed to by the
28 Parties or, if necessary, as appointed by the Court. Notwithstanding the foregoing, if FDA

1 authorizes the percentage of octocrylene to increase above the current limit of 10% in Covered
2 Products, then this Consent Judgment shall by operation of law be amended to allow benzophenone
3 in finished Covered Products to rise in proportion to the percentage increase. P&C shall notify
4 Plaintiff of the date this Section operates to change any Finished Product Reformulation Standard.
5 This notice obligation shall sunset on June 1, 2023. Even if FDA changes the level of permissible
6 octocrylene prior to June 1, 2018, the civil penalty provisions of Section 3.1.2 shall apply as written,
7 not to any standards as modified by this Section 9. P&C represents they are not aware that the FDA
8 currently has published or made public plans to raise the allowable levels of octocrylene in the
9 Covered Products.

10 **10. NOTICE**

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

15 To P&C:

16 Brenda K. Radmacher, Esq.
17 Wood Smith Henning & Berman LLP
18 505 North Brand Boulevard
Suite 1100
Glendale, CA 91203-3804

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

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

21 **11. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
23 each of which shall be deemed an original, and all of which, when taken together, shall constitute
24 one and the same document. A facsimile or pdf signature shall be as valid as the original.

25 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Plaintiff agrees to comply with the reporting form requirements referenced in California
27 Health & Safety Code § 25249.7(f).
28

1 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

7 **14. MODIFICATION**

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

11 **15. ENFORCEMENT**

12 **15.1 Person & Covey, Inc.**

13 In order to assert a potential violation of the Consent Judgment, Plaintiff shall provide notice
14 to P&C as set forth in this paragraph (“**Notice of Breach**”): (a) Plaintiff shall provide all results of
15 testing conducted on a specific Covered Product during the three month period for which the
16 violation is alleged; (b) such testing must be of no less than five (5) of the same Covered Product
17 (irrespective of the volume size of the container) collected within the three (3) month period, from
18 five different retail vendors; (c) the average of all test results for that period exceed the finished
19 Product Reformulation Standard; and (d) Plaintiff shall provide the alleged violator a copy of (i) the
20 purchase information for the allegedly violating Covered Product and (ii) a digital image of the
21 allegedly violating Covered Product showing the SKU/UPC and, if present on the container, the
22 Lot/Batch number(s).

23 P&C and Plaintiff shall, within thirty days of receipt of the Notice of Breach, meet and
24 confer regarding the alleged violation, during which time Plaintiff shall not file any motion,
25 application, action, or pleading regarding the alleged violation.

26 For the first alleged violation as to any specific Covered Product for which Plaintiff provides
27 Notice of Breach, P&C whose Covered Product is alleged to be in violation may demonstrate
28 compliance by providing (1) a Certificate of Analysis or comparable verified quantitative

1 benzophenone content information for five (5) units of the Covered Product or for the lot(s) of
2 octocrylene from the supplier(s) of the octocrylene in the Covered Product at issue showing levels
3 of benzophenone meeting the Octocrylene Reformulation Standard, or (2) a prior test result, using
4 scientifically appropriate test methodologies, of the lot(s) of octocrylene used in the finished
5 product which is the subject of the Notice of Breach, showing levels of benzophenone meeting the
6 Octocrylene Reformulation Standard. If P&C cannot demonstrate compliance, it must pay a
7 stipulated civil penalty of \$25,000.00 to be allocated according to Section 3.1.

8 In the event that, thereafter, Plaintiff provides a Notice of Breach pertaining to a second
9 alleged violation for the same Covered Product, he must do so in accordance with this section. For
10 the second alleged violation noticed by Plaintiff of the same Covered Product P&C may
11 demonstrate compliance with the terms of the Consent Judgment by providing test results, using
12 scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or
13 on the first three (3) lots of octocrylene received more than 30 days after receipt of the written
14 response showing compliance with the Octocrylene Reformulation Standard received from the
15 supplier of the octocrylene used to make the finished product which was the subject of the first
16 Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots are
17 received during the relevant time period, testing is required only for such lots as were received.
18 Such a showing shall constitute compliance.

19 In the event that P&C cannot demonstrate compliance in the manner set forth above after
20 receipt of a second Notice of Breach for the same Covered Product, and Plaintiff thereafter provides
21 notice in accordance with the provisions in this Section of a third alleged violation for the same
22 Covered Product, P&C shall pay a stipulated penalty of \$50,000 for each such second or subsequent
23 violation.
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16. AUTHORIZATION

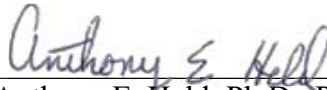
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 12/15/2016

Date: _____

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

By: _____
Lorne Person, CEO
Person & Covey, Inc.

1 **16. AUTHORIZATION**

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

5
6 AGREED TO:

AGREED TO:

7 Date: _____

Date: 12/6/2016

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

By: William A. Marquardt
~~Katharine S. Person, CEO,~~
~~Person & Covey, Inc.~~
WILLIAM A. MARQUARDT
SECRETARY/TREASURER