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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., )

Case No. CIV 1403766

13 Plaintiff, )

**[PROPOSED] CONSENT JUDGMENT**

14 v. )

15 PRODUCT QUEST MANUFACTURING, )  
16 LLC; *et al.*, )

Action Filed: October 3, 2014

17 Defendants. )  
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1       **1. INTRODUCTION**

2               **1.1 Anthony E. Held, Ph.D., P.E. and Product Quest Manufacturing, LLC**

3               This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4               P.E. (“Held” or “Plaintiff”) and defendant Product Quest Manufacturing, LLC (“Product Quest” or  
5               “Defendant”) with Plaintiff and Defendant collectively referred herein to as the “parties.”

6               **1.2 Anthony E. Held, Ph.D., P.E.**

7               Held is an individual residing in the State of California who states that he seeks to promote  
8               awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating  
9               hazardous substances contained in consumer and commercial products.

10              **1.3 Product Quest Manufacturing, LLC**

11              Defendant 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, California Health &  
13              Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14              **1.4 General Allegations**

15              Held alleges that Defendant manufactured, imported, distributed and/or sold in the State of  
16              California sunscreen containing benzophenone. Benzophenone is listed pursuant to Proposition 65  
17              as a chemical known to the State of California to cause cancer. Defendant denies Held’s  
18              allegations.

19              **1.5 Product Description**

20              The products that are covered by this Consent Judgment are defined as any and all sunscreen  
21              products containing any level of benzophenone no matter how packaged, labeled or branded,  
22              including, but not limited to, *Rite Aid Renewal Ultimate Sheer Sunscreen Lotion Broad Spectrum*  
23              *SPF 100, Item# 353723, UPC #0 11822 53723 0* and *TopCare Baby Sunscreen Stick, UPC #0 36800*  
24              *36112 6* which are or at any time were: i) manufactured, designed, processed, formulated, packaged  
25              by or for Defendant; and ii) imported, distributed, marketed, advertised, sold and/or offered for sale  
26              in the State of California (hereinafter the “Products”)

1           **1.6    Notices of Violation**

2           On June 20, 2014, Held served Product Quest Manufacturing, LLC, Topco Holdings, Inc.,  
3 Topco Associates, LLC and others and various public enforcement agencies with documents  
4 entitled “60-Day Notice of Violation” that provided the recipients with notice that Product Quest,  
5 Topco Holdings, Inc. and Topco Associates, LLC were in violation of California Health & Safety  
6 Code § 25249.6 for failing to warn consumers that their sunscreen allegedly exposed users in  
7 California to benzophenone (“Notice”). To the best of the Parties’ knowledge, no public enforcer  
8 has commenced and is diligently prosecuting the allegations set forth in the Notice.

9           **1.7    Complaints**

10          On July 21, 2014, Held filed a complaint in the Superior Court in and for the County of  
11 Marin against Levlad, LLC, et al., *Held v. Levlad, LLC, et al.*, Case No. CIV 1402798 (the “Lead  
12 Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged  
13 exposures to benzophenone contained in certain sunscreen sold by Levlad, LLC, et al. in the State  
14 of California.

15          On August 4, 2014, Held filed a complaint in the Superior Court in and for the County of  
16 Marin against L’Oreal USA, Inc., et al., *Held v. L’Oreal USA, Inc., et al.*, Case No. CIV 1402967  
17 (the “L’Oreal Action”), alleging violations of California Health & Safety Code § 25249.6, based on  
18 the alleged exposures to benzophenone contained in certain sunscreen sold by L’Oreal USA, Inc., et  
19 al. in the State of California.

20          On October 3, 2014, Held filed a complaint in the Superior Court in and for the County of  
21 Marin against Product Quest Manufacturing, LLC, et al., *Held v. Drugstore.com, Inc., et al.*, Case  
22 No. CIV 1403766 (the “Complaint” or “Drugstore.com Action”), alleging violations of California  
23 Health and Safety Code § 25249.6, based on alleged exposures of benzophenone contained in  
24 certain sunscreen sold in the State of California.

25          On December 19, 2014, the Superior Court in and for the County of Marin ordered the Lead  
26 Action, L’Oreal Action and the Drugstore.com Action consolidated. The Lead Action, L’Oreal  
27 Action and the Drugstore.com Action shall hereinafter collectively be referred to as the “Action.”  
28

1           **1.8    No Admission**

2           Defendant denies the material, factual and legal allegations contained in Held’s Notice and  
3           Complaint and maintains that all products that it has sold, manufactured, imported and/or  
4           distributed in California, including the Products, have been and are in compliance with all laws.  
5           Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
6           finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute  
7           or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or  
8           violation of law. However, this section shall not diminish or otherwise affect Defendant’s  
9           obligations, responsibilities and duties under this Consent Judgment.

10           **1.9    Consent to Jurisdiction**

11           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
12           jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
13           the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this  
14           Consent Judgment.

15           **1.10   Effective Date**

16           For purposes of this Consent Judgment, the term “Effective Date” shall mean August 31,  
17           2015.

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

19           **2.1    Reformulation Standards**

20           “Reformulated Products” are defined as those Products containing benzophenone: (i) in  
21           concentrations less than or equal to 12.5 parts per million ("ppm") when analyzed pursuant to a  
22           scientifically reliable application of U.S. Environmental Protection Agency testing methodologies  
23           3580A and 8270C or any other scientifically reliable methodology for determining the  
24           benzophenone content in a substance of the form of the Products herein; or (ii) in the raw material  
25           octocrylene in less than or equal to 200 ppm when analyzed by scientifically appropriate  
26           methodology for determining the benzophenone content in the octocrylene used in the formulation  
27           of the Products herein. As a response to the receipt of the 60-Day Notice, Product Quest  
28           immediately contacted it’s suppliers in an attempt to obtain octocrylene containing reduced amounts

1 of benzophenone, and as a result, Product Quest represents that as of the execution of this  
2 agreement, the Products it manufactures for sale within California (title passes in state) contain less  
3 than an average 6% octocrylene, which percentage results in less than 12.5 ppm of benzophenone in  
4 the finished Product.

## 5 **2.2 Compliance**

6 A. Commencing on May 1, 2015, Product Quest shall only place new orders for the  
7 purchase of octocrylene containing less than or equal to 200 ppm of benzophenone for use in the  
8 manufacture of Products which are intended to be distributed or sold within California, or which  
9 Product Quest has reason to believe will be sold or distributed in California.

10 B. Commencing on August 31, 2015, and continuing thereafter, Product Quest shall  
11 only manufacture, or cause to be manufactured, or order for distribution or sale in California,  
12 Products that qualify as Reformulated Products pursuant to Section 2.1 above.

## 13 **2.3 Exemption of Pre-Existing Products**

14 The reformulation standard set forth in Section 2.1 of this Consent Judgment applies to  
15 Products which are manufactured, marketed, sold, placed for sale, imported, advertised or  
16 distributed after, August 30, 2015.

## 17 **3. MONETARY PAYMENTS**

18 **3.1 Civil Penalty Payment.** Product Quest has been assessed civil penalties in the  
19 amount of \$78,750. The payment shall be allocated according to Health and Safety Code section  
20 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of  
21 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid  
22 to Held. Defendant shall pay a civil penalty in the amount of \$78,750 on or before the Effective  
23 Date. Defendant shall issue a check payable to “Jeffer Mangels Butler & Mitchell LLP” in the  
24 amount of \$78,750 to be held in trust by Jeffer Mangels Butler & Mitchell LLP. Jeffer Mangels  
25 Butler & Mitchell LLP shall provide The Chanler Group with written confirmation within five days  
26 of receipt that the funds have been deposited in a trust account. Within five business days of the  
27 date this Consent Judgment is approved by the Court, Jeffer Mangels Butler & Mitchell LLP shall  
28 issue a check made payable to “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount

1 of \$78,750. All penalty payments shall be delivered to the addresses listed in Section 3.3, below.  
2 Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts  
3 due and owing under this Section that are not received within two business days of the due date.

4 **3.2 Reimbursement of Fees and Costs**

5 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
7 issue to be resolved after the material terms of the agreement had been settled. Held then  
8 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
9 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held  
10 and his counsel under general contract principles and the private attorney general doctrine codified  
11 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
12 execution of this agreement. Defendant shall pay \$47,700 for fees and costs incurred as a result of  
13 investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the  
14 public interest. On or before the Effective Date, Product Quest shall issue a check payable to  
15 “Jeffer Mangels Butler & Mitchell LLP” in the amount of \$47,700 to be held in trust by the Jeffer  
16 Mangels Butler & Mitchell LLP for The Chanler Group. Jeffer Mangels Butler & Mitchell LLP  
17 shall provide The Chanler Group with written confirmation within five days of receipt that the  
18 funds have been deposited in a trust account. Within five business days of the date this Consent  
19 Judgment is approved by the Court, Jeffer Mangels Butler & Mitchell LLP shall issue a check  
20 payable to “The Chanler Group” to the address found in Section 3.3. below.

21 **3.3 Payment Procedures**

22 All payments under this Settlement Agreement are due within five (5) days of the date this  
23 Consent Judgment is approved by the Court, and shall be delivered to the following address:

24 The Chanler Group  
25 Attn: Proposition 65 Controller  
26 2560 Ninth Street  
27 Parker Plaza, Suite 214  
28 Berkeley, CA 94710

1       **4. CLAIMS COVERED AND RELEASED**

2               **4.1 Held’s Public Release of Proposition 65 Claims**

3               This Consent Judgment is a full, final and binding resolution of all claims that were or could  
4               have been asserted in the Action arising out of Defendant’s alleged failure to provide Proposition 65  
5               warnings for the Products. Held, acting on his own behalf and in the public interest, releases  
6               Defendant and their respective parents, subsidiaries, affiliated entities under common ownership,  
7               directors, officers, employees, and attorneys (“Releasees”) and each entity to whom they directly or  
8               indirectly distribute or sell the Products including, but not limited to, their downstream distributors,  
9               wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees,  
10              including Rite Aid Corporation and Topco Associates, LLC (“Downstream Releasees”) for  
11              violations arising under Proposition 65 for unwarned exposures to benzophenone from the Products  
12              sold prior to August 31, 2015, as set forth in the Notice.

13              **4.2 Held’s Individual Release of Claims**

14              Held, in his individual capacity only and *not* in his representative capacity, also provides a  
15              release to Defendant, Releasees, and Downstream Releasees which shall be effective as a full and  
16              final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
17              attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or  
18              kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
19              exposures to benzophenone in the Products sold or distributed for sale before August 31, 2015.

20              **4.3 Product Quest’s Release of Held**

21              Defendant on behalf of itself, its past and current agents, representatives, attorneys,  
22              successors and/or assignees, hereby waives any and all claims against Held, his attorneys and other  
23              representatives, for any and all actions taken or statements made (or those that could have been  
24              taken or made) by Held and his attorneys and other representatives, whether in the course of  
25              investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
26              respect to the Products.

1       **5. COURT APPROVAL**

2           This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
4 after it has been fully executed by all parties.

5       **6. SEVERABILITY**

6           If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
8 remaining shall not be adversely affected.

9       **7. GOVERNING LAW**

10          The terms of this Settlement Agreement shall be governed by the laws of the state of  
11 California and apply within the state of California. Benzophenone is listed pursuant to Proposition  
12 65 as a chemical that is known to the State of California to cause cancer. In the event that  
13 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to  
14 the Products, including the delisting of benzophenone, then Product Quest may provide written  
15 notice to Held of any asserted change in the law, and with the exception of sections 3.1 and 3.2  
16 above, have no further obligations pursuant to this Consent Judgment, with respect to, and to the  
17 extent that, the Products are so affected.

18       **8. NOTICES**

19          Unless specified herein, all correspondence and notices required to be provided pursuant to  
20 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
21 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
22 other party at the following addresses:

23           To Product Quest:

24           Matthew S. Kenefick  
25           Jeffer Mangels Butler & Mitchell, LLP  
26           Two Embarcadero Center, Fifth Floor  
27           San Francisco, CA 94111

23           To Anthony E. Held, Ph.D., P.E.:

24           Proposition 65 Coordinator  
25           The Chanler Group  
26           2560 Ninth Street  
27           Parker Plaza, Suite 214  
28           Berkeley, CA 94710-2565

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



1       **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

5       **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6           Held and his attorneys agree to comply with the reporting form requirements referenced in  
7 California Health & Safety Code § 25249.7(f).

8       **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9           Held and Defendant agree to mutually employ their best efforts to support the entry of this  
10 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
11 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code  
12 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which  
13 Held shall draft and file, and Defendant shall join. If any third party objection to the noticed motion  
14 is filed, Held and Defendant shall work together to file a joint reply and appear at any hearing  
15 before the Court. This provision is a material component of the Consent Judgment and shall be  
16 treated as such in the event of a breach.

17       **12. MODIFICATION**

18           In the event OEHHA designates a No-Significant Risk Level (“NSRL”) for benzophenone,  
19 according to which Products Quest asserts would allow for the Products to contain levels of  
20 benzophenone in amounts greater than those set forth above in Section 2.1, Product Quest may  
21 provide written notice to Held of any assertion and the Parties shall confer within 30 days to attempt  
22 to agree upon modification of this Consent Judgment. This Consent Judgment may be modified  
23 only by a written agreement of the parties.

24       **13. DISPUTE RESOLUTION**

25           If Held determines at a future date that a violation of this agreement has occurred, Held shall  
26 provide notice to Product Quest. Prior to bringing any action to enforce any requirement of this  
27 Consent Judgment, the party alleging a violation of this settlement agreement shall provide the other  
28

1 party with written notice of the grounds for such allegation together with all supporting information  
2 as well as a complete demand for the relief sought. The Parties shall then meet and confer  
3 regarding the basis for the allegation in an attempt to resolve the matter informally, including  
4 providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30)  
5 days to cure any alleged violation. Should such attempts at informal resolution fail, the party  
6 alleging a violation may file its lawsuit seeking the proposed relief.

7 **14. AUTHORIZATION**

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

11 AGREED TO:

AGREED TO:

Product Quest Manufacturing, LLC

12  
13 Date: March 20, 2015

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

16 Print Name: \_\_\_\_\_

17 Title: \_\_\_\_\_

1 party with written notice of the grounds for such allegation together with all supporting information  
2 as well as a complete demand for the relief sought. The Parties shall then meet and confer  
3 regarding the basis for the allegation in an attempt to resolve the matter informally, including  
4 providing the party alleged to be in violation with a reasonable opportunity of at least thirty (30)  
5 days to cure any alleged violation. Should such attempts at informal resolution fail, the party  
6 alleging a violation may file its lawsuit seeking the proposed relief.

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

11 AGREED TO:

AGREED TO:

Product Quest Manufacturing, LLC

12 Date: \_\_\_\_\_

Date: MARCH 18, 2015

13 By: \_\_\_\_\_  
14 Anthony E. Held, Ph.D., P.E.

By: Bill Jennings

15 Print Name: BILL JENNINGS

16 Title: CFO