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THE CHANLER GROUP  
2560 Ninth Street  
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Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,  
Plaintiff,  
v.  
PRIME ENTERPRISES, INC.; *et al.*,  
Defendants.

) Case No. RG17846980  
)  
) **[PROPOSED] CONSENT JUDGMENT**  
)  
)  
)  
) Action Filed: January 25, 2017

1       **1. INTRODUCTION**

2               **1.1 Parties**

3               This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4 P.E. (“Dr. Held”) and Prime Enterprises, Inc. (“Prime”) with Dr. Held and Prime collectively  
5 referred to as the “Parties” and individually as a “Party.”

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

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

10              **1.3 Prime Enterprises, Inc. and Benzophenone**

11              Prime manufactures, distributes, and/or sells sunscreen products. One ingredient used in  
12 sunscreen to enhance its ability to provide protection from the sun is octocrylene, an active  
13 ingredient approved by the Federal Food & Drug Administration (“FDA”). Octocrylene can at  
14 times contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe  
15 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et*  
16 *seq.* (commonly known as “Proposition 65”) as a chemical “known to the state to cause cancer” as  
17 Proposition 65 defines that phrase. 27 Cal. Code Reg. § 25000. Prime employs ten or more persons  
18 and is a person in the course of doing business for purposes of Proposition 65.

19              **1.4 Product Description**

20              The products covered by this Consent Judgment are sunscreens containing benzophenone  
21 including, but not limited to, the *Sol Mate Kid’s Continuous Spray Sunscreen 50 (Octocrylene*  
22 *2.75%), UPC #0 87524 96009 6* and the *Sol Mate Sport Continuous Spray Sunscreen 30*  
23 *(Octocrylene 2.75%), UPC #0 87524 96021 8*, manufactured, distributed or sold by Prime in  
24 California (“Products”).

25              **1.5 General Allegations**

26              Dr. Held alleges in the Complaint that Prime manufactured, and/or distributed for sale in  
27 California, and/or sold in California, products containing benzophenone without “a clear and  
28 reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr. Held asserts

1 this settlement is necessary to assure compliance with Proposition 65 now and in the future and to  
2 settle Dr. Held's alleged claims.

3 **1.6 Notice of Violation**

4 On May 26, 2016, Dr. Held served Prime and the requisite public enforcement agencies with  
5 a 60-Day Notice of Violation ("Notice"), alleging that Prime was in violation of Proposition 65 for  
6 failing to warn consumers in California that the Products expose users to benzophenone. To the  
7 best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the  
8 allegations set forth in any of the Notice.

9 **1.7 Complaint**

10 On January 25, 2017, Dr. Held commenced the instant action, naming Prime as one of the  
11 defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

12 **1.8 No Admission**

13 Prime denies all the respective material, factual, and legal allegations contained in the  
14 Notice and Complaint. Prime maintains that all of its Products have been and are in compliance  
15 with all laws, including the Product reformulation standards in paragraph 2.1(b) below. Prime  
16 further maintains that all of its Products currently meet and have met for some time the initial  
17 reformulation standards. Nothing in this Consent Judgment shall be construed as an admission  
18 against interest by Prime of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
19 compliance with this Consent Judgment constitute or be construed as an admission against interest  
20 by Prime of any fact, finding, conclusion, issue of law, or violation of law. This section shall not,  
21 however, diminish or otherwise affect Prime's obligations, responsibilities, and duties under this  
22 Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Prime as to the allegations contained in the Complaint, that venue is proper in the  
26 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
27 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

28

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
3 this Consent Judgment is approved and entered by the Court, including any unopposed tentative  
4 ruling.

5           **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD**

6           **2.1 Reformulation Standard**

7           (a)       Whereas, Prime, based on inquiry for purposes of this Consent Judgment, has not  
8 identified any ingredient in its Products other than octocrylene that is a source of detectable  
9 benzophenone in such Products. Further, based upon inquiry for purposes of this Consent  
10 Judgment, Prime represents that it has investigated and concluded that there are only a few major  
11 suppliers of octocrylene for the domestic market and that time and phasing is needed for the  
12 marketplace of octocrylene suppliers to make the adjustments necessary to deliver octocrylene with  
13 benzophenone meeting the Octocrylene Reformulation Standards.

14           (b)       Prime shall continue to manufacture, or cause to be manufactured, Products  
15 containing either no more than (i) 50 parts per million (“ppm”) benzophenone in the finished  
16 Products; or (ii) 500 ppm of benzophenone in the ingredient octocrylene used in the finished  
17 Products. These first standards are interim standards.

18           (c)       As of June 1, 2020, Prime shall only manufacture or cause to be manufactured, either  
19 Products containing no more than (i) 35 ppm benzophenone in the finished Covered Product; or (ii)  
20 350 ppm of benzophenone in the ingredient octocrylene used in the finished Products. These  
21 second standards are the “**Final Reformulation Standards.**”

22           (d)       The dates and reformulations of the Products as listed in Section 2.1 (b) and (c) shall  
23 be referred to collectively as the “**Reformulation Standards,**” consisting of either the Sections 2.1  
24 (b)(i) and (c)(i) (the “**Finished Product Reformulation Standards**”) or Sections 2.1 (b)(ii) and  
25 (c)(ii) (the “**Octocrylene Reformulation Standards**”). Section 2.1(c)(i) and (ii) shall not apply to  
26 products manufactured and distributed by Prime Enterprises, Inc. prior to June 1, 2020. The  
27 Reformulation Standards shall only limit the product being manufactured for the California market  
28 and in no way limits Prime's ability to sell other products outside the State of California. Prime

1 may at any time, at its own election, comply with either, both, or any combination of the applicable  
2 Finished Product Reformulation Standard or the Octocrylene Reformulation Standard with respect  
3 to any Covered Product.

4 (e) The Reformulation Standards shall apply to Products which are manufactured by or  
5 on behalf of Prime on or after the applicable Reformulation Standard dates.

## 6 **2.2 Notification**

7 Prime shall provide, no later than April 15, 2017, written notice (the “**Octocrylene Supplier**  
8 **Letter**”) to its current respective octocrylene supplier or suppliers, informing said supplier or  
9 suppliers of the Octocrylene Reformulation Standard and urging each supplier to use reasonable  
10 efforts to provide expeditiously only octocrylene which complies with the Octocrylene  
11 Reformulation Standard. Prime shall not include statements in the Octocrylene Supplier Letter that  
12 will encourage a supplier to delay compliance with the Octocrylene Reformulation Standard.

## 13 **2.3 Compliance with Reformulation Standards**

14 (a) Prime, if it elects to meet the Finished Product Reformulation Standard may, at its  
15 option, either (i) test the Covered Product pursuant to a scientifically appropriate application of U.S.  
16 Environmental Protection Agency testing methodologies 3580A, 8270C, or any other scientifically  
17 appropriate methodology for determining the benzophenone content in a substance of the form of  
18 the specific Covered Product being tested, or (ii) may use the appropriate mathematical calculation  
19 based on octocrylene percentage in the Covered Product and the benzophenone concentration in the  
20 lot of octocrylene used in the finished Covered Product, based either on testing of the octocrylene  
21 lot or on a certificate of analysis documenting benzophenone content from the octocrylene supplier  
22 (the “**Certificate of Analysis**”) at the option of Prime.

23 (b) Prime, if it elects to meet the Octocrylene Reformulation Standard shall obtain a  
24 Certificate of Analysis or analytical testing report for each lot of octocrylene used in the  
25 manufacture of Products. If, after Prime has advised its octocrylene suppliers to include a  
26 Certificate of Analysis with each lot of delivered octocrylene, an octocrylene supplier fails to  
27 include a Certificate of Analysis, Prime may correct the lapse upon discovery.

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1 (c) Prime may, absent grounds to question the accuracy, demonstrate compliance with  
2 either Reformulation Standard by relying in good faith on an octocrylene supplier's Certificate of  
3 Analysis or comparable verified quantitative benzophenone content information. Such good faith  
4 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene  
5 suppliers shall rely on any scientifically appropriate testing methodology for determining the  
6 benzophenone content of octocrylene.

7 (d) Prime shall retain compliance documentation for three years after delivery of a lot of  
8 octocrylene and compliance documentation shall be made available within 30 days of a written  
9 request by Plaintiff, who may make no more than two such requests annually.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty**

12 Pursuant to Health and Safety Code section 25249.7(b), Prime shall pay initial civil penalties  
13 and, if applicable, final civil penalties in the amounts identified below. The penalty payments shall  
14 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the  
15 penalty amount paid to the California Office of Environmental Health Hazard Assessment  
16 ("OEHHA") and the remaining 25% of the penalty paid to Dr. Held. Dr. Held's counsel shall be  
17 responsible for remitting Prime's penalty payment(s) under this Settlement Agreement to OEHHA.  
18 Each penalty payment shall be made to "The Chanler Group, Anthony E. Held Client Trust  
19 Account" and remitted to the address indicated in Section 3.3 below.

20 **3.1.1 Initial Civil Penalty.** Within five (5) business days of the Effective Date  
21 Prime shall issue a check payable to "The Chanler Group, Anthony E. Held Client Trust Account"  
22 in the amount of \$1,750, and a check payable to "OEHHA" in the amount of \$5,250.

23 **3.1.2 Final Civil Penalty.** On or before June 30, 2018, Prime shall pay a final  
24 civil penalty (the "Final Civil Penalty") in the amount of \$10,000. However, the Final Civil Penalty  
25 shall be waived in its entirety if Prime certifies that all Products subject to this Consent Judgment  
26 manufactured by or on behalf of Prime on or after June 1, 2018, meets a Final Reformulation  
27 Standard. A responsible official with personal knowledge, after due inquiry, of Prime that has  
28

1 exercised this election shall provide Dr. Held with a written certification confirming compliance  
2 with the above conditions on or before June 15, 2018.

3 **3.2 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
6 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the  
7 other settlement terms had been finalized, Prime expressed a desire to resolve Dr. Held's fees and  
8 costs. Prime agrees to pay Dr. Held and his counsel under the private attorney general doctrine  
9 codified at California Code of Civil Procedure section 1021.5, for all work performed through the  
10 mutual execution of this agreement, including without limitation the fees and costs incurred as a  
11 result of investigating, bringing this matter to Prime's attention, negotiating a settlement, and  
12 seeking court approval of the same. Prime agrees to pay \$30,000 in fees and costs within five (5)  
13 business days of the Effective Date in the form of a check made payable to "The Chanler Group."

14 **3.3 Payment Procedures**

15 All payments under this Consent Judgment shall be delivered to:

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

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final and binding resolution of all claims that were or could  
24 have been asserted in the Complaint arising out of Prime's alleged failure to provide Proposition 65  
25 warnings for exposures to benzophenone in its Products. Dr. Held, acting on his own behalf and in  
26 the public interest, releases Prime and its parents, subsidiaries, affiliated entities under (full or  
27 partial) common ownership, manufacturers, suppliers and the directors, officers, employees,  
28 attorneys, and predecessors, successors or assigns of each of them ("Releasees") and each entity to  
whom Prime directly or indirectly distributes or sells the Products including, but not limited to, its  
downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,

1 licensors and licensees, and including any and all subsidiaries, parents, marketplace retailers and/or  
2 affiliates of the foregoing retailers, including but not limited to Big Lots Stores, Inc. (collectively,  
3 the "Distribution Chain Releasees") for violations arising under Proposition 65 for unwarned  
4 exposures to benzophenone from the Products by Prime prior to the Effective Date. Dr. Held's  
5 release of claims applies to all Products which Prime either manufactured, and/or distributed and/or  
6 sold prior to the Effective Date, regardless of the date any person distributes or sells the subject  
7 Products.

8 Upon entry of this Consent Judgment by the Court, going forward, Prime's compliance with  
9 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65  
10 with respect to benzophenone in Prime's prior, current and future Products.

11 **4.2 Dr. Held's Individual Release of Claims**

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

19 **4.3 Prime's Release of Dr. Held**

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

26 **4.4 Release of Retailer Defendants**

27 This Consent Judgment provides a "Downstream" release which resolves all claims in the  
28 Notice for all Products manufactured by, or on behalf of or, distributed or sold by Prime



1 Enterprises, Inc. Any retailer who has been named in the Notice including, but not limited to Big  
2 Lots Stores, Inc., due to its sale of the Products manufactured or distributed by Prime Enterprises,  
3 Inc., shall be released pursuant to Sections 4.1 and 4.2 above.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and  
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
7 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in  
8 writing.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

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

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notice required to be provided pursuant to  
24 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class registered  
25 or certified mail, return receipt requested; or (iii) overnight courier on any party by the other at the  
26 following addresses:  
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To Prime:  
  
Carol R. Brophy, Esq.  
Sedgwick LLP  
333 Bush Street, 30<sup>th</sup> Floor  
San Francisco, CA 94104-2834  
  
Mohamed Barakat  
Prime Enterprises, Inc.  
16363 NW 49<sup>th</sup> Ave.,  
Miami Garden, FL 33014

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

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

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

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

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

Dr. Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

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**12. AUTHORIZATION**

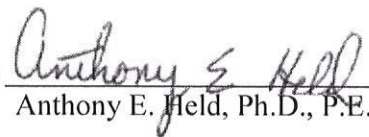
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 3/10/2017

Date: 3/22/2017

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

By:   
Mohamed Barakat, President  
Prime Enterprises, Inc.