

1 Clifford A. Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 Email: cliff@chanler.com

10 Attorneys for Plaintiff
11 ANTHONY E. HELD, PH.D., P.E.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 RALEY'S, *et al.*,

19 Defendants.

Case No. 115CV288975

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*, and
Cal. Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 ("Held"), and defendant Raley's, with Held and Raley's each individually referred to as a "Party" and
5 collectively as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Raley's employs ten or more individuals and is a "person in the course of doing business" for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Raley's manufactures, imports, sells, and distributes for sale in California,
16 vinyl/PVC gloves that contain diisononyl phthalate ("DINP"), and that it does so without first
17 providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that
21 are manufactured, imported, sold, or distributed for sale in California by Raley's ("Products")
22 including, but not limited to, the *Raley's Fine Living Supreme Clean Disposable Vinyl Gloves, UPC*
23 *#0 46567 91748 1.*

24 **1.6 Notice of Violation**

25 On January 23, 2015, Held served Raley's, the California Attorney General, and all other
26 requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that
27 Raley's violated Proposition 65 when it failed to warn its customers and consumers in California of
28

1 the health hazards associated with exposures to DINP from the Products. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On December 14, 2015, Held filed the instant action (“Complaint”), for the violations of
5 Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Raley’s as to the allegations in the Complaint, that venue is proper in Santa Clara
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
19 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
22 the motion for approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

23 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

24 Commencing on the Effective Date, and continuing thereafter, Raley’s agrees to only
25 manufacture for sale or purchase for sale in California, “Reformulated Products.” For purposes of
26 this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DINP
27 concentration of 1,000 parts per million (0.1 %) in any component analyzed pursuant to U.S.
28 Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent

1 methodologies utilized by state or federal agencies for the purpose of determining DINP content in a
2 solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
6 this Consent Judgment, Raley's shall pay \$5,000 in civil penalties. This civil penalty payment will be
7 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
8 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
9 Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Plaintiff. Raley's shall
10 provide its payment in a single check made payable to "Anthony E. Held Client Trust Account", to be
11 delivered to the address provided in section 3.3, below. Held's counsel shall be responsible for
12 remitting Raley's penalty payment(s) under this settlement to OEHHA.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The parties acknowledge that Held and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, Raley's expressed a desire to resolve Held's fees and costs.
18 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
19 counsel under general contract principles and the private attorney general doctrine codified at Code
20 of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
21 Consent Judgment. Raley's shall pay \$14,000 for the fees and costs incurred by Held investigating,
22 bringing this matter to the attention of Raley's's management, litigating, and negotiating a settlement
23 in the public interest.

24 **3.3 Payments Held in Trust**

25 All payments due under this Consent Judgment shall be delivered within five days of the date
26 this Consent Judgment is fully executed by the Parties, and held in trust by Raley's's counsel until
27 the Court approves the Parties' settlement. Raley's's counsel shall confirm in writing to Held's
28 counsel upon its receipt of the settlement funds from Raley's and, thereafter, hold the funds in trust

1 until the Effective Date, and deliver the payments to Held's counsel within five days of the Court's
2 approval of this Consent Judgment.

3 **3.4 Payment Address**

4 All payments required by this Consent Judgment shall be delivered to:

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Held's Public Release of Proposition 65 Claims**

10 Held, acting on his own behalf and in the public interest, releases Raley's and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
13 Products including, but not limited to, it's downstream distributors, wholesalers, customers,
14 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
15 any violations arising under Proposition 65 for the failure to warn about exposures to DINP from
16 Products sold by Raley's prior to the Effective Date, as set forth in the Notice. Compliance with the
17 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
18 failure to warn about exposures to DINP in Products sold by Raley's after the Effective Date.

19 **4.2 Held's Individual Release of Claims**

20 Held, in his individual capacity only and *not* in his representative capacity, also provides a
21 release to Raley's, Releasees, and Downstream Releasees which shall be effective as a full and final
22 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
23 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
24 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
25 exposures to DINP in Products sold or distributed for sale by Raley's before the Effective Date.

26 **4.3 Raley's's Release of Held**

1 Raley's, on its own behalf, and on behalf of its past and current agents, representatives,
2 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
3 attorneys and other representatives, for any and all actions taken or statements made by Held and
4 his attorneys and other representatives, whether in the course of investigating claims, otherwise
5 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6 **4.4 Notice to Raley's and Right to Cure**

7 If within eighteen months of the Effective Date, Held alleges that Raley's Products violates
8 the terms of this Consent Judgment, Held shall provide Raley's with thirty days written notice.
9 Within thirty days of receiving Held's notice, if Raley's confirms that it was a Product manufactured
10 before the Effective Date which was not captured in its recall, and for where a civil penalty has been
11 paid, Held will take no further action.

12 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of California
23 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
24 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Raley's may
25 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
26 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
27 so affected.

28

1 **8. NOTICE**

2 All correspondence and notice required by this Consent Judgment shall be in writing and sent
3 by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt requested; or (iii) a
4 recognized overnight courier to the following addresses:

5 For Raley's:

6 Legal Department
7 Raley's
8 500 West Capitol Avenue
9 West Sacramento, CA 95605

9 with a copy to:

10 Thomas Evans, Esq.
11 Reed Smith LLP
12 101 Evans Street,
13 Suite 1800
14 San Francisco, CA 94105-3659

13 For Held:

14 Proposition 65 Coordinator
15 The Chanler Group
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710-2565

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. POST EXECUTION ACTIVITIES**

24 Held agrees to comply with the reporting form requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
28 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial

1 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
2 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**


9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein

11 **AGREED TO:**

AGREED TO:

12
13 Date: 8/15/2016

Date: _____

14 By: 
15 ANTHONY HELD, PH.D., P.E.

By: _____

16 Title: _____
17 RALEY'S

1 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
2 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein

11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: 8/30/16

14
15 By: _____
16 ANTHONY HELD, PH.D., P.E.

By: 
17 RALEY'S
18 General Counsel