

1 Brian C. Johnson, State Bar No. 235965
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.
6

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 PACIFIC MERCHANTS TRADING
COMPANY, *et al.*,

16 Defendants.
17

Case No. CIV1500958

[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 plaintiff Anthony E. Held, Ph.D., P.E.
4 (“Held”), and Rayware Ltd. (“Rayware”), with Held and Rayware each individually referred to as a
5 “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
8 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Rayware**

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

14 **1.4 General Allegations**

15 Held alleges that Rayware manufactures, imports, sells, or distributes for sale in California,
16 kitchen utensils with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate (“DEHP”) without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are kitchen utensils with vinyl/PVC grips
21 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by
22 Rayware, including, but not limited to, the *Kilner Jam Jar Tongs, Item Code:0025.414, #38708,*
23 *#25414, UPC #5 010853167930, #7 83476 25414 6,* hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On or about April 3, 2015, Held served Rayware, Pacific Merchants Trading Company,
26 Bristol Farms, Typhoon Homewares, LLC, and certain requisite public enforcement agencies with a
27 “60-Day Notice of Violation” (“Notice”), alleging that the recipients violated Proposition 65 by
28 failing to warn their customers and consumers in California that the Products expose users to DEHP.

1 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 13, 2015, Held commenced the instant action. On June, 23, 2015 Held filed a First
5 Amended Complaint, the operative pleading in this action ("Complaint"), naming Rayware as a
6 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
7 the Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Rayware as to the allegations contained in the Complaint, that venue is proper in the
20 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date and continuing thereafter, Rayware agrees to only sell or
28 distribute for sale in California, "Reformulated Products." For purposes of this Consent Judgment,

1 “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent
2 (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
3 methodologies 3580A and 8270C or other methodology utilized by federal or state government
4 agencies for the purpose of determining DEHP content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, Rayware shall pay \$2,500 in civil penalties. The civil penalty payment shall
9 be tendered in a single check made payable to “Anthony Held, Client Trust Account” in the amount
10 of \$2,500. The penalty shall be allocated according to Health and Safety Code section
11 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
12 Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds
13 remitted to Held. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalty
14 payment to OEHHA.

15 **3.2 Reimbursement of Attorney’s Fees and Costs**

16 The parties acknowledge that Held and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
18 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
19 other settlement terms had been finalized, Rayware expressed a desire to resolve Held’s fees and
20 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
21 his counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
23 execution of this Consent Judgment. Rayware shall pay \$28,500 for the fees and costs incurred by
24 Held investigating, bringing this matter to Rayware’s attention, litigating and negotiating a settlement
25 in the public interest.

26 **3.3 Payments Held in Trust**

27 All payments due under this Consent Judgment shall be tendered within five (5) days of the
28 date that this Consent Judgment is fully executed by the Parties, and held in trust by Rayware’s

1 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
2 Section 5. Within two business days of the Court’s approval of this Consent Judgment, Rayware’s
3 counsel shall tender the civil penalty and attorneys’ fee reimbursement payments to Held’s counsel
4 at the address provided in Section 3.4, below.

5 **3.4 Payment Address**

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

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Held’s Public Release of Proposition 65 Claims**

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

22 **4.2 Held’s Individual Release of Claims**

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

1 **4.3 Rayware’s Release of Held**

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

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
10 has been fully executed by the Parties.

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the state of California
17 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
18 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Rayware may
19 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
21 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Rayware from any
22 obligation to comply with any pertinent state or federal toxics control laws.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required by this Consent Judgment
25 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
26 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
27
28

1 For Rayware:

2 Anthony Endfield, CEO
3 Rayware Ltd.
4 26-32 Spitfire Road
5 Triumph Trading Park
6 Speke Hall Road
7 Liverpool, L24 9BF

8 with a copy to:

9 Mark S. Pollock, Esq.
10 Pollock & James, LLP
11 1792 Second St.
12 Napa, CA 94559

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

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. POST EXECUTION ACTIVITIES**

26 Held agrees to comply with the reporting form requirements referenced in Health and Safety
27 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
28 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
supporting the motion, and appearing at the hearing before the Court.

1 **11. DISMISSAL OF BRISTOL FARMS**

2 Held agrees that no later than five days following the Effective Date he will file a request for
3 dismissal without prejudice as to defendant Bristol Farms.

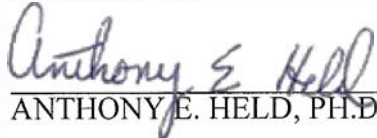
4 **12. MODIFICATION**

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; or (ii) a successful motion or application of any
7 Party, and the entry of a modified consent judgment by the Court.

8 **13. AUTHORIZATION**

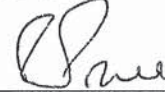
9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein.

11 **AGREED TO:**

12 
13 _____
14 ANTHONY E. HELD, PH.D., P.E.

15 Dated: 11/16/2015

11 **AGREED TO:**

12 
13 _____
14 RAYWARE LTD.

15 By: ROSEMARIE PRICE
16 (Print Name)

17 Its: SENIOR MANAGER
18 (Title)

19 Dated: NOVEMBER 6, 2015