

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

11
12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
16
17

18 ANTHONY E. HELD, Ph.D., P.E.,

19 Plaintiff,

20 v.

21 RHODE ISLAND NOVELTY, INC.; and
22 DOES 1-150, inclusive,

23 Defendants.

24 Case No. RG-15-763577

25 **[PROPOSED] CONSENT JUDGMENT**

26 (Health & Safety Code § 25249.6 *et seq.* and
27 Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held ("Held")
4 and defendant Rhode Island Novelty, Inc. ("Rhode Island Novelty"), with Held and Rhode Island
5 Novelty each referred to individually as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Rhode Island Novelty employs ten or more persons, and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Rhode Island Novelty manufactures, imports, sells and/or distributes for
16 sale in California, vinyl/PVC game cases containing di(2-ethylhexyl)phthalate ("DEHP"), and that
17 it does so without providing the health hazard warning that Held alleges is required by Proposition
18 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC game cases containing
21 DEHP sold and/or distributed by Rhode Island Novelty including, but not limited to, the vinyl case
22 component of the *Six in One Game Set, Item GA-6INIS, #02720, UPC #0 9 138 65919 4*
23 ("Products").

24 **1.6 Notice of Violation**

25 On August 28, 2014, Held served Rhode Island Novelty and the requisite public
26 enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Rhode Island
27 Novelty violated Proposition 65 when it failed to warn its customers and consumers in California
28 that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer

1 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
2 Notice.

3 **1.7 Complaint**

4 On March 26, 2015, Held commenced the instant action, naming Rhode Island Novelty as a
5 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

7 Rhode Island Novelty denies the allegations contained in the Notice and Complaint, and
8 maintains that all of the products that it has sold or distributed for sale in California, including the
9 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
10 be construed as an admission by Rhode Island Novelty of any fact, finding, conclusion of law, issue
11 of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
12 construed as an admission by Rhode Island Novelty of any fact, finding, conclusion of law, issue of
13 law, or violation of law. This Section shall not, however, diminish or otherwise affect Rhode Island
14 Novelty's obligations, responsibilities, and duties under 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 Rhode Island Novelty as to the allegations contained in the Complaint, that venue
18 is proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
19 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
20 section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
23 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 Commencing December 1, 2015, and continuing thereafter, Rhode Island Novelty shall only
26 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
27 this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP
28 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by
2 state or federal agencies for the purpose of determining DEHP content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, Rhode Island Novelty shall pay \$10,000 in civil
7 penalties in accordance with this Section. Each penalty payment will be allocated in accordance
8 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to
9 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
10 25% of the penalty remitted to Held. Held’s counsel shall be responsible for remitting Rhode
11 Island Novelty’s penalty payment(s) under this Consent Judgment to OEHHA.

12 **3.1.1 Initial Civil Penalty.** Rhode Island Novelty shall make an initial civil
13 penalty payment of \$4,000. Rhode Island Novelty shall provide its payment in a single check
14 made payable to “Anthony E. Held, Client Trust Account” to be delivered to the address provided
15 in Section 3.4, below.

16 **3.1.2 Final Civil Penalty.** On December 31, 2015, Rhode Island Novelty shall
17 make a final civil penalty payment of \$6,000. Pursuant to title 11 California Code of Regulations,
18 section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no
19 later than December 1, 2015, an officer of Rhode Island Novelty provides Held with an original,
20 signed written certification that all of the Products it ships for sale or distributes for sale in
21 California as of the date of its certification are Reformulated Products, and that Rhode Island
22 Novelty will continue to offer only Reformulated Products in California in the future. The option to
23 certify early reformulation in lieu of making the final civil penalty payment otherwise required by
24 this Section is a material term, and time is of the essence. Rhode Island Novelty shall deliver its
25 certificate, if any, to Held’s counsel at the address provided in Section 3.4, below. In the event that
26 Rhode Island Novelty does not timely certify its compliance or make the final civil penalty payment
27 required by this Section, the Parties agree that Held may file a motion or application seeking an
28 order compelling Rhode Island Novelty’s compliance with this Section. If successful, the Parties

1 further agree that Held shall be entitled to his reasonable attorneys' fees and costs pursuant to
2 general contract principles and Code of Civil Procedure section 664.6.

3 **3.2 Reimbursement of Attorneys' Fees and Costs**

4 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
6 to be resolved after the material terms of the agreement had been settled. Shortly after the other
7 settlement terms had been finalized, Rhode Island Novelty expressed a desire to resolve Held's
8 fees and costs. The Parties then negotiated a resolution of the compensation due to Held and his
9 counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
11 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
12 on appeal, if any, Rhode Island Novelty shall reimburse Held and his counsel \$29,000. Rhode
13 Island Novelty's payment shall be delivered to the address in Section 3.4 in the form of a check
14 payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by
15 Held investigating, bringing this matter to Rhode Island Novelty's attention, litigating, and
16 negotiating a settlement of the matter in the public interest.

17 **3.3 Payment Timing; Payments Held In Trust**

18 With the exception of the final civil penalty payment required by Section 3.1.2, Rhode
19 Island Novelty shall deliver all payments required by this Consent Judgment to its counsel
20 within one week of the date that this agreement is fully executed by the Parties. Rhode Island
21 Novelty's counsel shall confirm receipt of settlement funds in writing to Held's counsel and,
22 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for
23 approval of the Parties' settlement contemplated by Section 5. Within two days of the
24 Effective Date, Rhode Island Novelty's counsel shall deliver all settlement payments it has
25 held in trust to Held's counsel at the address provided in Section 3.4. In the event the final
26 civil penalty payment required by Section 3.1.2 becomes due prior to the Effective Date, then
27 Rhode Island Novelty shall deliver the final civil penalty payment to its attorney to be held in
28 trust until, and disbursed within two days after, the Effective Date.

1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

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

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Held’s Release of Proposition 65 Claims**

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

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

23 Held, in his individual capacity only and *not* in his representative capacity, also provides a
24 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
25 final 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 manufactured, imported, distributed or sold by Rhode Island
Novelty before the Effective Date.

1 **4.3 Rhode Island Novelty's Release of Held**

2 Rhode Island Novelty, on its own behalf and on behalf of its past and current agents,
3 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
4 Held and his attorneys and other representatives, for any and all actions taken or statements made
5 by Held and his attorneys and other representatives 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
9 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
10 after it has been fully executed by all Parties. Held and Rhode Island Novelty agree to support the
11 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
12 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
13 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
14 which motion Held shall draft and file and Rhode Island Novelty shall support, appearing at the
15 hearing if so requested. If any third-party objection to the motion is filed, Held and Rhode Island
16 Novelty agree to work together to file a reply and appear at any hearing. This provision is a
17 material component of the Consent Judgment and shall be treated as such in the event of a breach.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

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

1 **8. NOTICE**

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

6 To Rhode Island Novelty:	To Held:
7 William Tarantino, Esq.	Attn: Proposition 65 Coordinator
8 Morrison & Foerster	The Chanler Group
9 425 Market Street	2560 Ninth Street
10 San Francisco, CA 94105-2482	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Held and his counsel agree to comply with the reporting form requirements referenced in
19 California Health and Safety Code section 25249.7(f).

20 **11. MODIFICATION**

21 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
22 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
23 any party and the entry of a modified Consent Judgment by the Court thereon.

24 **12. AUTHORIZATION**

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

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Anthony E. Held
ANTHONY E. HELD Ph.D., P.E.

Dated: 11/24/2015

AGREED TO:

[Signature]
RHODE ISLAND NOVELTY, INC.

By: BOGDAN NOWAK
(Print Name)

Its: PRESIDENT
(Title)

Dated: 11/24/15