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11 Attorneys for Defendants
12 RV DESIGNER AND WOODBRIDGE, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SACRAMENTO
15 UNLIMITED CIVIL JURISDICTION
16

17 ANTHONY E. HELD, PH.D., P.E.,
18 Plaintiff,
19
20 v.
RV DESIGNER, et al.
21 Defendants.
22

Case No. 34-2018-00230677

CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”)
4 and RV Designer and Woodbridge, Inc. (collectively referred to herein as “RV Designer”), with Held
5 and RV Designer each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 RV Designer 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 and
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that RV Designer manufactures, imports, distributes, sells and/or offers for sale
16 in California vinyl/PVC seat covers containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed
17 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.
18 Held alleges that RV Designer failed to provide the health hazard warning allegedly required by
19 Proposition 65 for exposures to DEHP from vinyl/PVC seat covers.

20 **1.5 Products Description**

21 The products that are covered by this Consent Judgment are vinyl/PVC seat covers containing
22 DEHP including, but not limited to, the *RV Designer Motorhome Seat Covers, Part # C795, UPC #6*
23 *01320 95795 3*, manufactured, imported, distributed, sold or offered for sale in or into California by
24 RV Designer (collectively, the “Products”).

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1 **1.6 Notice of Violation**

2 On or about November 20, 2017, Held served RV Designer, and certain requisite public
3 enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that RV Designer
4 violated Proposition 65 by failing to warn its customers and consumers in California that its Products
5 expose users to DEHP.

6 **1.7 Complaint**

7 On April 9, 2018, no public enforcer having commenced prosecuting the allegations set forth
8 in the Notice, Held filed the instant action (“Complaint”), for the violations of Proposition 65 that are
9 the subject of the Notice.

10 **1.8 No Admission**

11 RV Designer denies the material, factual, and legal allegations contained in the Notice and the
12 Complaint and maintains that all of the products that it has sold and distributed in California,
13 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
14 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be
15 construed as, an admission by RV Designer of any fact, finding, conclusion, issue of law, or violation
16 of law, such being specifically denied by RV Designer. However, this Section shall not diminish or
17 otherwise affect RV Designer’s obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
25 the Court grants the motion for approval of the Consent Judgment contemplated by Section 10, *infra*.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

2 **2.1 Reformulation Commitment.**

3 Commencing on the Effective Date and continuing thereafter, RV Designer shall only
4 manufacture, distribute, sell or offer for sale in or into California, “Reformulated Products”. For
5 purposes of this Consent Judgment, “Reformulated Products” are Products containing DEHP, butyl
6 benzyl phthalate (“BBP”), di-n-butyl (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate
7 (“DINP”), and di-n-hexyl phthalate (“DnHP”) each in concentrations of less than 0.1 percent (1,000
8 parts per million) when analyzed by a laboratory accredited by the State of California, a federal
9 agency, or a nationally recognized accrediting organization. For purposes of compliance with this
10 reformulation standard, testing samples shall be prepared and extracted using Consumer Product
11 Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S.
12 Environmental Protection Agency (“EPA”) methodology 8270C, or other methodologies utilized by
13 federal or state government agencies to determine phthalate content in a solid substance.

14 **2.2 Warning Alternative.**

15 As an alternative to reformulating the Products, commencing on the Effective Date but ending
16 no later than September 30, 2018, Products that RV Designer ships for sale, sells or offers for sale in
17 California that do not meet the Reformulation Commitment set forth in Section 2.1 above shall be
18 accompanied by a warning as described in Section 2.3 below.


19 **2.3 Warnings.** Where required under Section 2.2 above, RV Designer shall provide the
20 following Proposition 65 warnings in a type size no smaller than the largest type size used for
21 consumer information (as defined in 27 Cal. Code of Regs. § 25600.1(c)) on the Product or Product
22 label, and in no case smaller than 6-point type:

23 **⚠ WARNING:** This product can expose you to DEHP, a chemical known to the State of
24 California to cause birth defects or other reproductive harm. For more information go
25 to www.P65Warnings.ca.gov

26 OR, if the warning is placed directly on the Product, either

27 **⚠ PROP 65 WARNING:** Birth defects or other reproductive harm –
28 www.P65Warnings.ca.gov.

1 OR,

2  **WARNING:** Birth defects or other reproductive harm – www.P65Warnings.ca.gov.

3 **2.4** Where utilized as an alternative to meeting the criteria set forth in Section 2.1,
4 pursuant to Section 2.2, RV Designer shall prominently affix to or print on each Product’s label or
5 package or the Product itself the warning language set forth in Section 2.3 with such conspicuousness
6 when compared with other words, statements or designs as to render it likely to be read and
7 understood by an ordinary individual under customary conditions of use. If printed on the label, the
8 warning shall be contained in the same section that states other safety warnings, if any, concerning
9 the use of the Product

10 **2.5** The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to
11 the terms of this Consent Judgment. The Parties recognize that these are not the exclusive methods of
12 providing a warning under Proposition 65 and its implementing regulations.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty**

15 Pursuant to Health and Safety Code §25249.7(b)(2), and in settlement of all claims alleged in
16 the Notice, RV Designer agrees to pay a total of 15,000 in civil penalties. The penalty payments will
17 be allocated in accordance with Health and Safety Code §25249.12(c)(1) & (d), with 75% of the
18 penalty amount remitted to the California Office of Environmental Health Hazard Assessment
19 (“OEHHA”) and the remaining 25% of the penalty amount retained by Held. First, within 5 days of
20 the Effective Date, RV Designer shall provide its initial civil penalty payments as follows: (i) a check
21 in the amount of \$3,750 payable to “OEHHA”, and (ii) a check in the amount of \$1,250 payable to
22 “Anthony Held Client Trust Account.” Second, one year after the Effective Date, RV Designer shall
23 either (a) pay its final civil penalty as follows: (i) a check in the amount of \$7,500 payable to
24 “OEHHA” and (ii) a check in the amount of \$2,500 payable to “Anthony Held Client Trust Account”,
25 or (b) provide Held with the written certification of an officer of RV Designer stating that, as of the
26 date of said certification, and continuing into the future, only Products that are Reformulated Products
27 as defined in Section 2.1, above, shall be sold in the State of California. The certification in lieu of a
28 final civil penalty payment provided by this Section is a material term, and time is of the essence.

1 Held's counsel shall be responsible for delivering OEHHA's portion of the penalty payments made
2 under this Consent Judgment.

3 **3.2 Attorneys' Fees and Costs**

4 The Parties reached an accord on the compensation due to Held and his counsel under general
5 contract principles and the private attorney general doctrine codified at Code of Civil Procedure
6 §1021.5 for all work performed in this matter. Under these legal principles, within 5 days of the
7 Effective Date, RV Designer agrees to pay \$27,500 to Held and his counsel for all fees and costs
8 incurred investigating, bringing this matter to the attention of RV Designer's management, and
9 negotiating that provides a significant public benefit. RV Designer's payment shall be in the form of
10 a check payable to "The Chanler Group."

11 **3.3 Payment Address**

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

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held's Individual Release of RV Designer**

19 This Consent Judgment is a full, final and binding resolution between Held, acting on his own
20 behalf and in the public interest, and RV Designer, of any violation of Proposition 65 that was or
21 could have been asserted by Held on behalf of himself, his past and current agents, principals,
22 employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys,
23 predecessors, successors, and/or assignees and heirs ("Releasers"), against RV Designer, its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
25 and each entity to whom RV Designer directly or indirectly distributes or sells the Products including,
26 but not limited, its downstream distributors, wholesalers, customers, retailers, franchisees,
27 cooperative members, and licensees, and their owners, directors, officers, agents, principals,
28 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Releasees"), for
any and all claims based on the failure to warn about alleged exposures to DEHP contained in the

1 Products sold by RV Designer before the Effective Date as alleged in the Notice.

2 In further consideration of the promises and agreements herein contained, Held, on behalf of
3 himself and his Releasers, hereby waives any and all rights that he may have to institute or participate
4 in, directly or indirectly, any form of legal action and releases all claims that Held may have,
5 including, without limitation, all actions, and causes of action, in law and in equity, all suits,
6 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but
7 not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with
8 respect to DEHP, BBP, DBP, DIDP, DINP, and DnHP in the Products sold by RV Designer before
9 the Effective Date (collectively "claims"), against RV Designer and Releasees.

10 **4.2 RV Designer's Release of Held**

11 RV Designer, on its own behalf, and on behalf of its past and current agents, parents,
12 subsidiaries, affiliated entities under common ownership, directors, officers, employees,
13 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against
14 Held and his attorneys and other representatives, for any and all actions taken or statements made by
15 Held and his attorneys and other representatives, whether in the course of investigating claims
16 articulated in the Notices, otherwise seeking to enforce Proposition 65 against it in this matter, or
17 regarding the Products.

18 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

24 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
25 of the provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of
26 the remaining provisions shall not be adversely affected.

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to DEHP, BBP, DBP, DIDP, DINP, DnHP or
5 as to the Products, then RV Designer may provide written notice to Held of any asserted change in
6 the law, or its applicability to RV Designer or the Products, and shall have no further injunctive
7 obligations pursuant to this Consent Judgment with respect to, and to the extent that, RV Designer or
8 the Products are so affected.

9 **8. NOTICE**

10 Unless specified herein, all correspondence and notice required to be provided pursuant to this
11 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or
12 certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other
13 at the following addresses:

RV Designer:	John W. Tinghitella, President RV Designer 602 Wheeling Road Wheeling, IL 60090	Held:	Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710
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17 on behalf of **RV Designer:**

18 George Dowell, Esq.
19 Dowell LLP
20 177 Park Avenue, Suite 200
21 San Jose, California 95113

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

24 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

 Held and his attorneys agree to comply with the reporting form requirements referenced in
California Health and Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to

1 Health and Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the
2 settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their best
3 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
4 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
5 shall include, at a minimum, supporting the motion.
6

7 **11. MODIFICATION**

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

11 **12. AUTHORIZATION**

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

15 **AGREED TO:**

AGREED TO:

16 Date: 12/21/2018

16 Date: 1-10-19

17
18 By: Anthony E. Held

18 Anthony E. Held, Ph.D., P.E.

17
18 By: John W. Tingle

18 David Shapiro, President
19 RV Designer and Woodbridge, Inc.

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