

1 Laralei Paras, State Bar No. 203319
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone:(510) 848-8880
7 Facsimile: (510) 848-8118

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

10 Gary A. Wexler, State Bar No. 58611
11 THOMPSON COBURN LLP
12 2029 Century Park East, 19th Floor
13 Los Angeles, CA 90067
14 Telephone:(310) 282-9470
15 Facsimile: (310) 282-2501

16 Attorneys for Defendant
17 SAS SAFETY CORPORATION

18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

SAS SAFETY CORPORATION, and DOES 1-
150, inclusive,

Defendants.

Case No. RG15761231

[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 defendant, SAS Safety Corporation (“SAS”), with Held and SAS each referred to
5 individually as a “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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that SAS has manufactured, imported, distributed, sold and/or offered for sale in
16 California, hearing protection with vinyl/PVC ear cushions containing di(2-ethylhexyl)phthalate
17 (“DEHP”) and vinyl/PVC aprons containing DEHP. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as hearing protection
21 with vinyl/PVC ear cushions including, but not limited to, *Foldable Earmuff, P/N 6110, UPC #7*
22 *81311 06110 1*, and vinyl/PVC aprons including, but not limited to, *SAS Safety PVC Apron, PN 6821,*
23 *UPC #7 81311 06821 6*, manufactured, imported, distributed, sold and/or offered for sale by SAS in
24 the State of California, hereinafter “Products.”

25 **1.6 Notice of Violation**

26 On June 4, 2014, Held served SAS and various public enforcement agencies with a document
27 entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Held
28 alleged that SAS was in violation of California Health & Safety Code § 25249.6 for failing to warn

1 consumers that its hearing protection with vinyl/PVC ear cushions exposed users in the State of
2 California to DEHP.

3 On March 13, 2015, Held served SAS, Sears Holdings Corporation, Kmart Corporation,
4 Amazon.com, Inc. and various public enforcement agencies with a document entitled "Supplemental
5 60-Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice that
6 Held alleged that SAS and Amazon.com, Inc. were in violation of California Health & Safety Code
7 § 25249.6 for failing to warn consumers that SAS' vinyl/PVC aprons exposed users in the State of
8 California to DEHP, and alleged that SAS, Sears Holding Corporation and Kmart Corporation were
9 in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that that
10 SAS' hearing protection with vinyl/PVC ear cushions exposed users in the State of California to
11 DEHP.

12 The Notice and Supplemental Notice are collectively referred to herein as the "Notices." To
13 the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting
14 the allegations set forth in the Notices.

15 1.7 Complaint

16 On March 6, 2015, Held filed the instant action against SAS for the alleged violations of
17 Health & Safety Code § 25249.6 that are the subject of the Notice. On or about July 29, 2015, Held
18 filed a first amended complaint ("Complaint") against SAS for the alleged violations of Health &
19 Safety Code § 25249.6 that are the subject of the Notices.

20 1.8 No Admission

21 SAS denies the material, factual, and legal allegations contained in the Notices and
22 Complaint, and maintains that all of the products that it has sold in California, including the Products,
23 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed
24 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
25 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
26 finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by
27 SAS. This section shall not, however, diminish or otherwise affect SAS' obligations, responsibilities,
28 and duties under this Consent Judgment.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, SAS shall pay a total of
4 \$15,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in
5 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
6 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
7 remaining 25% of the penalty retained by Held, as follows:

8 **3.1.1 Initial Civil Penalty.** SAS shall pay an initial civil penalty in the amount of
9 \$5,000.

10 **3.1.2 Final Civil Penalty.** On or before November 1, 2016, SAS shall pay a final
11 civil penalty in the amount of \$10,000 with one check made payable to “Anthony Held, Client Trust
12 Account.” The final civil penalty shall be waived in its entirety, however, if, no later than one year
13 after the Effective Date, an officer of SAS provides Held with written certification that, as of the date
14 of the written certification and continuing into the future, SAS has met the reformulation standard
15 specified in Section 2.3 above, such that all Products manufactured, imported, sold and/or distributed
16 for sale in California by SAS are Reformulated Products. The certification in lieu of a final civil
17 penalty payment provided by this Section is a material term, and time is of the essence. Any such
18 certification shall be delivered to the address listed in Section 3.5 below.

19 **3.2 Representations**

20 SAS represents that the sales data and other information concerning its Products sales
21 information, knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to Held
22 in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this
23 Settlement Agreement and a material factor upon which Held relied to determine the amount of civil
24 penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the
25 Effective Date, Held discovers and presents to SAS, evidence demonstrating that the preceding
26 representation and warranty was materially inaccurate, then SAS shall have 30 days to meet and
27 confer regarding Held’s contention. Should this 30 day period pass without any such resolution
28

1 between Held and SAS, Held shall be entitled to file a formal legal claim including, but not limited to,
2 a claim for damages for breach of contract.

3 **3.3 Reimbursement of Held’s 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 to
6 be resolved after the material terms of the agreement had been settled. Shortly after all other
7 settlement terms had been finalized, SAS expressed a desire to resolve the fee and costs issue. The
8 Parties then attempted to (and did) reach an accord on the compensation due Held and his counsel
9 under general contract principles and the private attorney general doctrine codified at California Code
10 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs incurred
11 on appeal, if any. Under these legal principles, SAS shall pay \$40,000 for fees and costs incurred
12 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be
13 incurred) drafting, negotiating, and obtaining the Court’s approval of this Consent Judgment in the
14 public interest.

15 **3.4 Payments Held In Trust**

16 SAS shall deliver all payments required by Sections 3.1.1 and 3.3 to its counsel within five (5)
17 days of the Execution Date. SAS’ counsel shall confirm receipt of settlement funds in writing to
18 Held’s counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the
19 motion for approval of the Parties’ settlement contemplated by Section 5. Within five (5) days of the
20 Effective Date, SAS’ counsel shall deliver the following settlement payments to Held’s counsel at the
21 address provided in Section 3.5.

- 22 (i) For the civil penalty payment set forth in Section 3.1.1, one check
- 23 payable to “Anthony Held, Client Trust Account”.
- 24 (ii) For reimbursement of fees and costs set forth in Section 3.3, one check
- 25 payable to “The Chanler Group”.

26 ///

27 ///

28 ///

1 representatives, for any and all actions taken or statements made (or those that could have been taken
2 or made) by Held and his attorneys and other representatives, whether in the course of investigating
3 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
4 Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

10 If, subsequent to the Execution Date, any provision is held by a court to be unenforceable, the
11 validity of the remaining provisions shall not be adversely affected.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
15 rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement
16 Agreement are rendered inapplicable or no longer required as a result of any such repeal or
17 preemption or rendered inapplicable by reason of law generally as to the Products, then SAS shall
18 provide written notice to Held of any asserted change in the law, and shall have no further obligations
19 pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so
20 affected. Nothing in this Settlement Agreement shall be interpreted to relieve SAS from any
21 obligation to comply with any pertinent state or federal toxics control law.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class
4 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier, to one party by
5 the other party at the following addresses:

6 For SAS: Ken Watson, President
7 SAS Safety Corporation
8 3031 Gardenia Avenue
9 Long Beach, CA 90807

For Held: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With a copy on behalf of SAS to:

10 Gary A. Wexler, Esq.
11 Thompson Coburn LLP
12 2029 Century Park East, 19th Floor
13 Los Angeles, CA 90067

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.

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

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

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

19 Held agrees to comply with the reporting form requirements referenced in California Health &
20 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
21 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
22 settlement. In furtherance of obtaining such approval, Held and SAS agree to mutually employ their
23 best efforts, and those of their counsel, to support the entry of this agreement as a Consent Judgment
24 and to obtain judicial approval of the settlement in a timely manner. For purposes of this section,
25 “best efforts” shall include, at a minimum, cooperating on the drafting and filing of the necessary
26 moving papers and supporting the motion for judicial approval.

27 ///

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

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 9/14/2015

Date: _____

By: *Anthony E. Held*
Anthony Held

By: _____
Ken Watson, President
SAS Safety Corporation

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

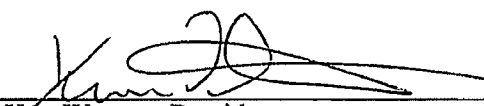
9 Date: _____

10
11 By: _____

12 Anthony Held

AGREED TO:

9 Date: 9-17-15

10
11 By:  _____

12 Ken Watson, President
SAS Safety Corporation

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28