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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 GENUINE PARTS COMPANY; S.P.
16 RICHARDS COMPANY; *et al.*,

17 Defendants.
18

Case No. CGC15547451

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
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, Ph.D.,
4 P.E. (“Held”) and defendant S.P. Richards Company (“S.P. Richards”), with Held and S.P.
5 Richards 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 S.P. Richards employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that S.P. Richards manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC gloves containing the phthalate chemical Diisononyl phthalate (“DINP”), and
17 that it does so without providing the health hazard warning that Held alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment is vinyl/PVC gloves containing DINP,
21 including, but not limited to, the *Genuine Joe General Purpose Protection Vinyl Gloves, #15389*,
22 *UPC #0 35255 15389 8* (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On March 31, 2015, Held served S.P. Richards and the requisite public enforcement
25 agencies with a 60-Day Notice of Violation (“Notice”), alleging that S.P. Richards violated
26 Proposition 65 when it failed to warn its customers and consumers in California that the Products
27 expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has commenced
28 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On August 18, 2015, Held commenced the instant action, naming S.P. Richards, among
3 others, as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over S.P. Richards as to the allegations contained in the Complaint, that venue is proper
16 in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
18 section 664.6.

19 **1.10 Effective Date**

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

22 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

23 **2.1 Reformulated Products**

24 Commencing on the Effective Date, and continuing thereafter, S.P. Richards shall only
25 purchase for sale, manufacture for sale, import, sell, or distribute for sale in California
26 "Reformulated Products," or Products that are sold with a clear and reasonable warning pursuant to
27 Section 2.2 below. For purposes of this Consent Judgment, "Reformulated Products" are products
28 that contain DINP in concentrations of less than 0.1 percent (1,000 parts per million) when

1 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
2 8270C or any other methodology utilized by federal or state agencies for the purpose of
3 determining the DINP content in a solid substance.

4 **2.2 Product Warnings**

5 Commencing on the Effective Date, S.P. Richards shall provide clear and reasonable
6 warnings for all Products as set forth in subsections 2.2(a) and (b) for all products that do not
7 currently have warnings and that do not qualify as Reformulated Products. Each warning shall be
8 prominently placed with such conspicuousness as compared with other words, statements, designs,
9 or devices as to render it likely to be read and understood by an ordinary individual under
10 customary conditions before purchase or use. Each warning shall be provided in a manner such that
11 the consumer or user understands to which *specific* Product the warning applies, so as to minimize
12 the risk of consumer confusion.

13 **(a) Retail Store Sales.**

14 **(i) Product Labeling.** S.P. Richards shall affix a warning to the packaging,
15 labeling, or directly on each vinyl/PVC glove packaging provided for sale in retail outlets in
16 California that states:

17 **WARNING:** This product contains DINP, a chemical known
18 to the State of California to cause cancer.

19
20 **(ii) Point-of-Sale Warnings.** Alternatively, S.P. Richards may provide warning
21 signs in the form below to its customers in California with instructions to post the warnings in close
22 proximity to the point of display of the Products. Such instruction sent to S.P. Richards customers
23 shall be sent by certified mail, return receipt requested.

24 **WARNING:** This product contains DINP, a chemical known
25 to the State of California to cause cancer.

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
3 shall be used:¹

4
5 **WARNING:** The following products contain DINP, a chemical known
6 to the State of California to cause cancer:
7 [*list products for which warning is required*]

8
9 **(b) Mail Order Catalog and Internet Sales.** In the event that S.P. Richards sells
10 Products via mail order catalog and/or the internet, to customers located in California, after the
11 Effective Date, that are not Reformulated Products, S.P. Richards shall provide warnings for such
12 Products sold via mail order catalog or the internet to California residents. Warnings given in the
13 mail order catalog or on the internet shall identify the *specific* Product to which the warning applies
14 as further specified in Sections 2.2(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
16 catalog shall be in the same type size or larger than the Product description text within the catalog.
17 The following warning shall be provided on the same page and in the same location as the display
18 and/or description of the Product:

19
20 **WARNING:** This product contains DINP, a chemical known
21 to the State of California to cause cancer.
22
23
24

25 _____
26 ¹For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another similar product
27 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not
28 reasonably determine which of the two products is subject to the warning sign.

1 Where it is impracticable to provide the warning on the same page and in the same location
2 as the display and/or description of the Product, S.P. Richards may utilize a designated symbol to
3 cross reference the applicable warning and shall define the term “designated symbol” with the
4 following language on the inside of the front cover of the catalog or on the same page as any order
5 form for the Product(s):

6 **WARNING:** Certain products identified with this symbol ▼
7 and offered for sale in this catalog contain DINP,
8 a chemical known to the State of California to
9 cause cancer.

10 The designated symbol must appear on the same page and in close proximity to the display
11 and/or description of the Product. On each page where the designated symbol appears, S.P.
12 Richards must provide a header or footer directing the consumer to the warning language and
13 definition of the designated symbol.

14 (ii) **Internet Website Warning.** A warning shall be given in conjunction with
15 the sale of the Products via the internet, which warning shall appear either: (a) on the same web
16 page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c)
17 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
18 purchaser during the checkout process. The following warning statement shall be used and shall
19 appear in any of the above instances adjacent to or immediately following the display, description,
20 or price of the Product for which it is given in the same type size or larger than the Product
21 description text:

22 **WARNING:** This product contains DINP, a chemical known
23 to the State of California to cause cancer.

24
25 Alternatively, the designated symbol may appear adjacent to or immediately following the
26 display, description, or price of the Product for which a warning is being given, provided that the
27 following warning statement also appears elsewhere on the same web page, as follows:
28

1 S.P. Richards shall reimburse Held and his counsel \$21,000. S.P. Richards's payment shall be
2 delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group."
3 The reimbursement shall cover all fees and costs incurred by Held investigating, bringing this
4 matter to S.P. Richards's attention, litigating, and negotiating a settlement of the matter in the
5 public interest.

6 **3.3 Payment Timing; Payments Held In Trust**

7 S.P. Richards shall deliver all payments required by this Consent Judgment to its counsel
8 within two weeks (fourteen days) of the date that this agreement is fully executed by the Parties
9 and receipt of all W-9 forms. S.P. Richards's counsel shall confirm receipt of settlement funds in
10 writing to Held's counsel and, thereafter, hold the amounts paid in trust until such time as the
11 Court grants the motion for approval of the Parties' settlement contemplated by Section 5. Within
12 two days of the Effective Date, S.P. Richards's counsel shall deliver all settlement payments it has
13 held in trust to Held's counsel at the address provided in Section 3.4.

14 **3.4 Payment Address**

15 All payments required by this Consent Judgment shall be delivered to the following
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Held's Release of Proposition 65 Claims**

23 Held, acting on his own behalf and in the public interest, releases S.P. Richards and their
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 and attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
26 Products including, but not limited to, their downstream distributors, wholesalers, customers,
27 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
28 any violations arising under Proposition 65 for unwarned exposures to DINP from the Products

1 manufactured, imported, distributed or sold by S.P. Richards prior to the Effective Date, as set forth
2 in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
3 Proposition 65 by S.P. Richards with respect to the alleged or actual failure to warn about exposures
4 to DINP from Products manufactured, sold or distributed for sale by S.P. Richards after the
5 Effective Date.

6 **4.2 Held's Individual Release of Claims**

7 Held, in his individual capacity only and *not* in his representative capacity, also provides a
8 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
11 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to DINP in Products manufactured, imported, distributed or sold by S.P. Richards before
13 the Effective Date.

14 **4.3 S.P. Richards's Release of Held**

15 S.P. Richards, on its own behalf and on behalf of its past and current agents, representatives,
16 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
17 attorneys and other representatives, for any and all actions taken or statements made (or those that
18 could have been taken or made) by Held and his attorneys and other representatives in the course of
19 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
20 the Products.

21 **5. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and
23 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
24 after it has been fully executed by the Parties. Held and S.P. Richards agree to support the entry of
25 this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
26 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
27 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
28 motion Held shall draft and file and S.P. Richards shall support, including by appearing at the

1 hearing if so requested. If any third-party objection to the motion is filed, Held and S.P. Richards
2 agree to work together to file a reply and appear at any hearing. This provision is a material
3 component of the Consent Judgment and shall be treated as such in the event of a breach.

4 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of California
10 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
11 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then S.P.
12 Richards may provide Held with written notice of any asserted change in the law, and shall have no
13 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
14 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve S.P.
15 Richards from its obligation to comply with any pertinent state or federal law or regulation.

16 **8. NOTICE**

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

21 To S.P. Richards:

22 Tina I. Mangarpan, Esq.
23 Ford, Walker, Haggerty & Behar, LLP
24 One World Trade Center, 27th Floor
Long Beach, CA 90831

To Held:

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

25
26 Any Party may, from time to time, specify in writing to the other Party a change of address to
27 which all notices and other communications shall be sent.
28

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

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AGREED TO:

Date: 5/25/2016

By: *Anthony E. Held*
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

Date: 5/20/16

By: *K. Eidbo*
[signature]

Kathleen Eidbo
[print name]

Its: Counsel
[title]
S.P. RICHARDS COMPANY