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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
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12 ANTHONY E. HELD, PH.D., P.E.,
13 Plaintiff,
14 v.
15 TOMY INTERNATIONAL, INC., *et al.*,
16 Defendants.

Case No. 16CV291645
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

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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 Tomy International, Inc. (“Tomy”), with Held and Tomy 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 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Tomy manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure
17 warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known
18 to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that
21 are manufactured, imported, sold, or distributed for sale in California by Tomy including, but not
22 limited to, the *American Red Cross Be Red Cross Ready First Aid Kit (Genuine First Aid Vinyl*
23 *Gloves), Y7482, VG-1, UPC #0 71463 07482 2*, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On or about July 31, 2015, Held served Tomy and the requisite public enforcement agencies
26 with a “60-Day Notice of Violation” (“Notice”) alleging that Tomy violated Proposition 65 by failing
27 to warn its customers and consumers in California of the health hazards associated with exposures to
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1 DINP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 17, 2016, Held filed the instant action ("Complaint"), naming Tomy as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Motion for Approval of the Consent Judgment contemplated by Section 5 is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date and continuing thereafter, Tomy shall only purchase for
27 sale, manufacture for sale, sell, or distribute for sale in California, "Reformulated Products." For
28 purposes of this Consent Judgment, Reformulated Products are products that contain either no DINP

1 or DINP in concentrations that do not exceed 0.1 percent (1,000 parts per million) when analyzed
2 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
3 equivalent methodologies utilized by federal or state agencies for the purpose of determining DINP
4 content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
8 to in the Notice, Complaint, and this Consent Judgment, Tomy shall pay \$6,000 in civil penalties.
9 The civil penalty payment shall be allocated according to Health and Safety Code section
10 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of
11 Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds
12 remitted to Held. Tomy shall deliver its payment in a single check made payable to “Anthony E.
13 Held, Client Trust Account.” Held’s counsel shall be responsible for delivering OEHHA’s portion of
14 the penalty 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, Tomy expressed a desire to resolve Held’s fees and costs.
20 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
21 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. On or before the Effective Date, Tomy shall pay \$32,000 for
24 the fees and costs incurred by Held investigating, bringing this matter to Tomy’s attention, litigating
25 and negotiating a settlement in the public interest.

26 **3.3 Payments Held in Trust**

27 All payments due under this Consent Judgment shall be tendered within fifteen days of the
28 date that this Consent Judgment is fully executed by the Parties, and held in trust by Tomy’s counsel

1 until such time as the Court approves the Parties' settlement. Within two business days of the
2 Court's approval of this Consent Judgment, Tomy's counsel shall deliver the civil penalty and
3 attorneys' fee and costs payments required by Sections 3.1 and 3.2 to Held's counsel at the address
4 provide in Section 3.4.

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 Tomy 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, its downstream distributors, wholesalers, customers, retailers,
16 franchisers, resellers, cooperative members, licensors and licensees ("Downstream Releasees") for
17 any violations arising under Proposition 65 for unwarned exposures to DINP from Products sold by
18 Tomy prior to the Effective Date, as set forth in the Notice.

19 **4.2 Held's Individual Release of Claims**

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

26 **4.3 Tomy's Release of Held**

27 Tomy, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Held and his

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

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

9 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
10 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
11 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 as to the Products, then Tomy may provide
16 written notice to Held of any asserted change in the law, and shall have no further injunctive
17 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
18 so affected.

19 **8. NOTICE**

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

23 **Tomy:**
24 Masayuki Nagatake, President
25 Tomy International, Inc.
26 2015 Spring Road, Suite 400
27 Oak Brook, IL 60523

Melissa A. Jones, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

26 **Held:**
27 The Chanler Group
28 Attention: Prop 65 Coordinator
2560 Ninth Street
Parker Plaza Suite 214
Berkeley CA, 94710

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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

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

16 **11. MODIFICATION**

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

20 **12. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
22 Parties and acknowledge that they have read, understood, and agree to all of the terms and conditions
23 contained herein.

24 **AGREED TO:**

AGREED TO:

25 **APPROVED**
26 Date: *By Anthony Held at 11:53 am, Apr 15, 2016*

Date: *April 14, 2016*

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

By: *Masayuki Nagatake*
Masayuki Nagatake, President
TOMY INTERNATIONAL, INC.