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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

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

18 Plaintiff,

19 v.

20 TRACTOR SUPPLY COMPANY,

21 Defendant.
22

Case No. CGC-18-566691

[PROPOSED]
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.
4 (“Held”) and Tractor Supply Company (“TSC”), with Held and TSC each individually referred to as
5 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 TSC employs ten or more individuals and is alleged to be 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 & Safety Code § 25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that TSC manufactured, imported, distributed, offered for sale and/or sold in or
16 into California sprayer hoses containing Lead without providing consumers or other individuals
17 residing in California the clear and reasonable warning that he alleges is required under Proposition
18 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5 Products Description**

21 The “Products” covered by this Consent Judgment are defined as sprayer hoses containing
22 Lead that are manufactured, imported, distributed and offered for sale or otherwise sold, directly or
23 indirectly, in or into California by TSC as a component of its sprayer products including, but not
24 limited to, the *GroundWork 1/2 Gallon Pump Sprayer, #1093696, UPC #7 49394 08650 3*.

25 **1.6 Notice of Violation**

26 On November 20, 2017, Held served TSC and the requisite public enforcement agencies with
27 a “60-Day Notice of Violation” (“Notice”) alleging that TSC violated Proposition 65 by failing to
28 warn customers and consumers in California of their alleged exposure to Lead in the Products at or

1 above levels requiring a warning under Proposition 65. No public enforcer has commenced and is
2 diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On May 21, 2018, no public enforcer having commenced prosecution of the allegations set
5 forth in the Notice, Held filed the instant action (“Complaint”) for the alleged violations of
6 Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

8 TSC denies the material, factual, and legal allegations in the Notice and Complaint, and
9 maintains that all products it has manufactured, imported, distributed, shipped, sold and/or offered
10 for sale in California, including the Products, have been and are safe and in compliance with all
11 laws. Nothing in this Consent Judgment shall be construed as, nor shall compliance with this
12 Consent Judgment constitute or be construed as, an admission by TSC of any allegation, fact,
13 finding, conclusion, issue of law, or violation of law, such being specifically denied by TSC. This
14 Section shall not, however, diminish or otherwise affect TSC’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 TSC as to the allegations in the Complaint, that venue is proper in the City and
19 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 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 Court grants the motion for approval of the Consent Judgment contemplated by Section 11.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING**

25 **2.1 Reformulation Commitment**

26 Commencing on the Effective Date and continuing thereafter, TSC shall only manufacture
27 for sale, purchase for sale, or import for sale in California, Products that are Reformulated Products
28 as defined by Section 2.2, or Products that are labeled with a clear and reasonable warning as set

1 forth under Section 2.3.


2 **2.2 Reformulation Standard**

3 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
4 that contain no more than 90 parts per million (0.009%) Lead content when sampled and analyzed
5 pursuant to EPA testing methodologies 3050B and 6010B; and (c) yield a result of no more than 1.0
6 micrograms of Lead when sampled according to NIOSH 9100 protocol and analyzed according to
7 EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent
8 methodologies utilized by a state or federal agency to determine Lead content in a solid substance.


9 **2.3 Clear and Reasonable Warnings**

10 Commencing on the Effective Date and continuing thereafter, all Products TSC sells and/or
11 distributes for sale in California which do not qualify as Reformulated Products, will bear a clear and
12 reasonable warning pursuant to this Section. TSC further agrees that the warning will be prominently
13 placed with such conspicuousness when compared with other words, statements, designs or devices
14 as to render it likely to be read and understood by an ordinary individual under customary conditions
15 of use.

16 For purposes of this Consent Judgment, a clear and reasonable warning for the Products shall
17 consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California
18 and containing one of the following statements:

19  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov

20 OR

21  **WARNING:** This product can expose you to chemicals
22 including Lead, which is known to the
23 State of California to cause cancer and birth defects or
24 other reproductive harm. For more information
25 go to www.P65Warnings.ca.gov

26 Pursuant to Health and Safety Code § 25603(a)(1), the warning symbol that accompanies the
27 warning language may be printed in black and white where the sign, label, or shelf tag for the product
28 is not printed using the color yellow.

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1 For purposes of this Consent Judgment, a clear and reasonable warning for Products
2 manufactured prior to August 30, 2018, may also consist of a warning affixed to the packaging, label,
3 tag, or directly to a Product sold in California and containing the following statement:

4 **WARNING:** This product contains chemicals known to the State of California
5 to cause cancer, birth defects or other reproductive harm.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in
9 the Notice or referred to in this Consent Judgment, TSC agrees to pay a total of \$11,750 in civil
10 penalties. The penalty payment will be allocated in accordance with California Health and Safety
11 Code § 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of
12 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
13 amount retained by Held.

14 TSC will deliver its payment within five business (5) days of receipt by TSC of copies of the
15 order approving this Consent Judgment and the Judgment entered pursuant to the terms of this
16 Consent Judgment in two checks for the following amounts made payable to: (a) “OEHHA” in the
17 amount of \$8,812.50; and (b) “Anthony Held, Client Trust Account” in the amount of \$2,937.50.
18 Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this
19 Consent Judgment.

20 **3.2 Attorneys’ Fees and Costs**

21 The Parties reached an accord on the compensation due to Held and his counsel under
22 general contract principles and the private attorney general doctrine codified at Code of Civil
23 Procedure § 1021.5 for all work performed in this matter. TSC agrees to pay \$38,250 to Held and
24 his counsel for all fees and costs incurred investigating, bringing this matter to the attention of TSC’s
25 management, and negotiating a settlement that provides a significant public benefit. TSC’s payment
26 shall be delivered in the form of a check payable to “The Chanler Group” within five business (5)
27 days of receipt by TSC of copies of the order approving this Consent Judgment and the Judgment
28 entered pursuant to the terms of this Consent Judgment.

1 **3.3 Payment Address**

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

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

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Held’s Release of Proposition 65 Claims**

8 Held, acting on his own behalf and in the public interest, releases TSC, its parents,
9 subsidiaries, predecessors and successors in interest, affiliated entities under common ownership,
10 and their directors, officers, employees, agents, shareholders, partners, members and attorneys
11 (“Releasees”), and each entity to whom TSC directly or indirectly distributes or sells the Products,
12 including, but not limited, TSC’s downstream distributors, wholesalers, customers, retailers,
13 franchisees, cooperative members, licensors and licensees, and their owners, directors, officers,
14 agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
15 (“Downstream Releasees”) from any and all claims that were or could have been asserted by Held,
16 his past and current agents, principals, employees, insurers, accountants, entities under his ownership
17 or direction, representatives, attorneys, successors, and/or assignees (“Releasers”) under Proposition
18 65 for failure to warn about alleged exposures to Lead in the Products manufactured, imported,
19 distributed, offered for sale and/or sold in or into California by TSC, Releasees, and/or Downstream
20 Releasees on or before the Effective Date, as alleged in the Notice. Compliance with the terms of
21 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead
22 from the Products.

23 **4.2 Held’s Individual Release of Claims**

24 In further consideration of the promises and agreements herein contained, Held, on behalf of
25 himself, and Releasers, waives any and all rights that he may have to institute or participate in,
26 directly or indirectly, any form of legal action against TSC, Releasees or Downstream Releasees,
27 and releases TSC, Releasees, and Downstream Releasees from, without limitation, all claims,
28 actions, and causes of action, in law and in equity, all suits, liabilities, demands, obligations,

1 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
2 expert fees, and attorneys' fees), that were asserted, or that could have been asserted, against TSC,
3 Releasees or Downstream Releasees for any alleged violations of Proposition 65, or any other
4 alleged violations of statutory or common law, arising from alleged exposures to Lead in the
5 Products sold by TSC before the Effective Date (collectively "claims").

6 **4.3 TSC's Release of Held**

7 TSC, on its own behalf, and on behalf of its past and current agents, representatives,
8 attorneys, successors, and/or assignees, hereby waives any and all claims against Held and his
9 attorneys and other representatives, for any and all actions taken or statements made by Held and his
10 attorneys and other representatives, whether in the course of investigating claims articulated in the
11 Notice, otherwise seeking to enforce Proposition 65 against it in this matter, or regarding the
12 Products.

13 **4.4 Mutual Release of Known and Unknown Claims**

14 It is possible that other claims not known to the Parties arising out of the facts alleged in the
15 Notice and relating to the Products sold by TSC before the Effective Date will develop or be
16 discovered. Held, on behalf of himself and Releasors, in his individual capacity only and not in his
17 representative capacity, and TSC, each acknowledge that this release is expressly intended to cover
18 and include all such claims, including all rights of action therefor, and further acknowledge that the
19 claims released in Sections 4.1, 4.2 and 4.3 may include unknown claims, and nevertheless waive
20 California Civil Code § 1542 as to any such unknown claims arising out of the facts alleged in the
21 Notice and relating to the Products sold by TSC before the Effective Date. California Civil Code
22 § 1542 reads as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

26 The Parties acknowledge and understand the significance and consequences of this specific waiver of
27 California Civil Code § 1542 arising out of the facts alleged in the Notice and relating to the Products
28 sold by TSC before the Effective Date.

1 **5. COURT APPROVAL**

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

6 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to Lead or as to the Products, then TSC may
14 provide written notice to Held of any asserted change in the law, or its applicability to TSC or the
15 Products, and shall have no further injunctive obligations pursuant to this Consent Judgment with
16 respect to, and to the extent that, TSC or the Products are so affected.

17 **8. NOTICE**

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

22 For **TSC:** Karen Austin
23 Vice President, Legal & Compliance
24 Tractor Supply Company
 5401 Virginia Way
 Brentwood, TN 37027

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

25 With a copy to:

26 Jay W. Connolly
27 Seyfarth Shaw LLP
28 560 Mission Street, 31st Floor
 San Francisco, CA 94105-2930

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/PDF 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,
6 when taken together, shall constitute one and the same document.

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

8 Held and his attorneys agree to comply with the reporting form requirements referenced in
9 California Health and Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to
10 Health and Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the
11 settlement. In furtherance of obtaining such approval, the Parties agree to mutually employ their
12 best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to
13 obtain judicial approval of their settlement in a timely manner. For purposes of this Section, “best
14 efforts” shall include, at a minimum, supporting the motion.

15 **11. MODIFICATION**

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

19 **12. ENTIRE AGREEMENT**

20 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
21 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
22 No representations or terms of agreement other than those contained herein exist or have been made
23 by any Party with respect to the other Party or the subject matter hereof.

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13. AUTHORIZATION

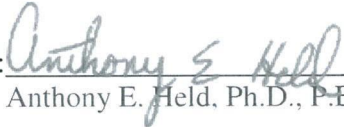
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 8/22/2018

Date: 8-23-18

By: 
Anthony E. Held, Ph.D., P.E.

By: 
Karen Austin,
Vice President, Legal & Compliance
Tractor Supply Company