

1 Laralei S. Paras, State Bar No. 203319
THE CHANLER GROUP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, CA 94710
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118
laralei@chanler.com

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PH.D., P.E.

7 Samir J. Abdelnour, State Bar No. 271636
8 HANSON BRIDGETT LLP
1676 N. California Blvd., Suite 620
9 Walnut Creek, CA 94596
Telephone: (925) 746-8460
10 Facsimile: (925) 746-8490
SAbdelnour@hansonbridgett.com

11 Attorneys for Defendant
12 URIAH PRODUCTS, LLC

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 ANTHONY E. HELD, PH.D., P.E.,
19 Plaintiff,
20 v.
21 INFINITE INNOVATIONS, INC.; URIAH
PRODUCTS, LLC; *et al.*,
22 Defendants.
23

Case No. CGC-18-564903
[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., P.E.
4 (Held) and defendant Uriah Products, LLC (Uriah), with Held and Uriah each referred to
5 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 products.

10 **1.3 Defendant**

11 Uriah 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 § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Held alleges that Uriah manufactures, imports, sells and/or distributes for sale in California
16 alligator clip covers containing di(2-ethylhexyl)phthalate (DEHP), and that it does so without
17 providing the health hazard warning that Held alleges is required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
19 other reproductive harm.

20 **1.5 Product Description**

21 The “Products” covered by this Consent Judgment are defined as alligator clip covers
22 containing DEHP including, but not limited to, *Uriah Products Hi-Low Voltage Checker*,
23 *UA663170, UPC #8 05089 66317 3* that are manufactured, imported and/or distributed by Uriah and
24 sold and/or offered for sale in California.

25 **1.6 Notice of Violation**

26 On November 20, 2017, Held served Uriah and the requisite public enforcement agencies
27 with a 60-Day Notice of Violation (the Notice), alleging that Uriah violated Proposition 65 when it
28 failed to warn its customers and consumers in California that the Products expose users to DEHP.

1 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 9, 2018, Held commenced the instant action (Complaint), naming Uriah as one of
5 the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

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

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
21 Consent Judgment is entered by the Court.

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

23 **2.1 Commitment to Reformulate or Provide Warnings**

24 Commencing on the Effective Date and continuing thereafter, Uriah shall only manufacture
25 for sale, purchase for sale, or import for sale in or into California Products that are Reformulated
26 Products as defined by Section 2.2, or Products that are labeled with a clear and reasonable warning
27 as set forth under Sections 2.3 through 2.6.

28

1 written, printed or graphic material that is printed on or affixed to a Product or its immediate
2 container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no
3 smaller than the largest type size used for other consumer information on the product. The warning
4 shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b),
5 respectively.

6 **2.5 Mail Order Catalog Warnings**

7 In the event that, after the Effective Date, Uriah prints new catalogs and sells Products via
8 mail order through such catalogs to customers located in California, Uriah shall provide a warning
9 for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a
10 manner that clearly associates the warning with the specific Product being purchased. Any warning
11 provided in a mail order catalog shall be in the same type size or larger than other consumer
12 information provided for the Product within the catalog and shall be provided on the same page and
13 in the same location as the display and/or description of the Product. The catalog warning may use
14 the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product
15 label also uses the Short-Form Warning content.

16 **2.6 Internet Warnings**

17 If, after the Effective Date, Uriah sells Products via the internet to customers located in
18 California, Uriah shall provide warnings for each Product both on the Product label in accordance
19 with Section 2.4, and by prominently displaying the warning to the customer prior to completing the
20 purchase or during the purchase of the Products without requiring customers to seek out the warning.
21 Warnings given in conjunction with the sale of the Products via the internet shall appear either: (i)
22 on the same web page on which the Product is displayed; (ii) on the same web page as the order
23 form for the Product; or (iii) on one or more web pages displayed to a purchaser during the checkout
24 process. The warning shall appear in any of the above instances adjacent to or immediately
25 following the display or description of the Product for which it is given in the same type size or
26 larger than the Product description text. The internet warning may use the Short-Form Warning
27 content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-
28 Form Warning content. Uriah may also comply with this section by providing the warning using a

1 clearly marked hyperlink that includes the word “**WARNING**” on the same web page and in the
2 same location as the display and/or description of the Product.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
6 in the Notice, Complaint, and this Consent Judgment, Uriah agrees to pay \$2,700 in civil penalties.
7 Uriah’s civil penalty payment will be allocated according to Health and Safety Code
8 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
9 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five
10 percent (25%) of the penalty payment retained by Held. Within ten (10) days of the Effective Date,
11 Uriah shall issue its payment in two checks made payable to (a) “OEHHA” in the amount of \$2,025
12 and (b) “Anthony Held, Client Trust Account” in the amount of \$675. Held’s counsel shall be
13 responsible for delivering OEHHA’s portion of the penalty payment.

14 **3.2 Reimbursement of Attorneys’ Fees and Costs**

15 The parties acknowledge that Held and his counsel offered to resolve this dispute without
16 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,
17 the Parties negotiated the compensation to be paid to Held and his counsel under general contract
18 principles and the private attorney general doctrine codified at California Code of Civil Procedure
19 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court
20 approval of the same, but exclusive of fees and costs on appeal, if any. Within ten (10) days of the
21 Effective Date, Uriah shall issue payment in the amount of \$26,800 by a check made payable to
22 “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to Uriah’s
23 attention, litigating, and negotiating a settlement in the public interest.

24 **3.3 Payment Address**

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

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Held's Release of Proposition 65 Claims**

3 Held, acting on his own behalf and in the public interest, releases Uriah and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys (Releasees) and each entity to whom Uriah directly or indirectly distributes or sells the
6 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
7 franchisers, cooperative members, licensors and licensees (Downstream Releasees) for any
8 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
9 manufactured, imported, distributed or sold by Uriah prior to the Effective Date, as set forth in the
10 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
11 Proposition 65 by Uriah with respect to the alleged or actual failure to warn about exposures to
12 DEHP from Products manufactured, sold or distributed for sale by Uriah after the Effective Date.

13 **4.2 Held's Individual Release of Claims**

14 Held, in his individual capacity only and *not* in his representative capacity, also provides a
15 release to Uriah, Releasees, and Downstream Releasees which shall be effective as a full and final
16 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
18 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
19 exposures to DEHP in Products manufactured, imported, distributed or sold by Uriah before the
20 Effective Date. Nothing in Section 4 affects Held's right to commence or prosecute an action under
21 Proposition 65 against a Releasee or Downstream Releasee that does not involve Uriah's Products.

22 **4.3 Uriah's Release of Held**

23 Uriah, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
25 attorneys and other representatives, for any and all actions taken or statements made (or those that
26 could have been taken or made) by Held and his attorneys and other representatives in the course of
27 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the
28 Products.

1 **5. COURT APPROVAL**

2 This Consent Judgment shall be null and void if, for any reason, it is not approved and
3 entered by the Court within one year after it has been fully executed by all Parties. Held and Uriah
4 agree to support the entry of this agreement as a judgment, and to obtain the Court’s approval of
5 their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and
6 Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent
7 Judgment, which motion Held shall draft and file. In furtherance of obtaining such approval, the
8 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of
9 this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner.
10 For purposes of this section, “best efforts” shall include, at a minimum, supporting the motion for
11 approval, responding to any objection that any third-party may file or lodge, and appearing at the
12 hearing before the Court if so requested.

13 **6. SEVERABILITY**

14 If, after the Court’s approval and entry of this Consent Judgment as a judgment, any
15 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
16 remaining provisions shall not be adversely affected.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. If Proposition 65 is repealed, preempted, or is otherwise
20 rendered inapplicable by reason of law generally, or as to the Products, then Uriah may provide Held
21 with written notice of any asserted change in the law, and shall have no further injunctive obligations
22 pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so
23 affected. Nothing in this Consent Judgment shall be interpreted to relieve Uriah from its obligation
24 to comply with any pertinent state or federal law or regulation.

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notice required by this Consent Judgment
27 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
28

1 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
2 following addresses:

3 To Uriah:

4 Donald W. Jacobs, General Manager
5 Uriah Products, LLC
6 2720 North Commerce Drive
7 Springfield, MO 65803

To Held:

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

7 With a Copy To:

8 Samir J. Abdelnour, Esq.
9 HANSON BRIDGETT LLP
10 1676 N. California Blvd., Suite 620
11 Walnut Creek, CA 94596

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

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

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

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Held and his counsel agree to comply with the reporting form requirements referenced in
19 California Health and Safety Code § 25249.7(f).

20 **11. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
24 therein. There are no warranties, representations, or other agreements between the Parties except as
25 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
26 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
27 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
28 exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9
10 **AGREED TO:**

AGREED TO:

11 Date: 11/5/2018

Date: _____

12
13 By: 
14 ANTHONY E. HELD, PH.D., P.E.

By: _____
Donald W. Jacobs, General Manager
URIAH PRODUCTS, LLC

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7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
8 Consent Judgment.


9
10 **AGREED TO:**

11 Date: _____

12
13 By: _____
14 ANTHONY E. HELD, PH.D., P.E.

AGREED TO:

11 Date: 11/2/2008

12
13 By: 
14 Donald W. Jacobs, General Manager
URIAH PRODUCTS, LLC