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

ENDORSED
FILED

JUL 21 2016

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: _____
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E., Plaintiff, v. OMAR MEDICAL SUPPLIES, INC., *et al.*, Defendants.	Case No. 16CV291147 **~~[PROPOSED]~~ JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT** Date: July 21, 2016 Time: 9:00 a.m. Dept.: 3 Judge: Hon. William Elfving

In the captioned action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant Omar Medical Supplies, Inc., having agreed through their respective counsel that judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment ("Consent Judgment"), and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment on July 21, 2016;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: JUL 21 2016

James L. Stoelker

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E., Plaintiff, v. OMAR MEDICAL SUPPLIES, INC., *et al.*, Defendants.	Case No. 16CV291147 **[PROPOSED] CONSENT JUDGMENT** (Health & Safety Code § 25249.6 *et seq.* and Code Civ. Proc. § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. ("Held"), and Omar Medical Supplies, Inc. ("Omar"), with Held and Omar each individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

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

1.4 General Allegations

Held alleges that Omar imports, sells, or distributes for sale in California vinyl/PVC gloves that contain diisononyl phthalate ("DINP") without first providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.5 Product Description

For purposes of this Consent Judgment "Products" are defined as (a) vinyl/PVC gloves containing DINP that are manufactured, imported, sold, or distributed for sale by Omar, and (b) sold or distributed for sale in California, regardless of the seller, including, but not limited to, the *OMAR Powder Free Vinyl Gloves, Part # 5313/VPF, UPC #1 81148 00038 8.*

1.6 Notice of Violation

On April 24, 2015, Held served Omar, the California Attorney General, and all other requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Omar violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DINP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.7 Complaint

On February 3, 2016, Held filed the instant action ("Complaint"), naming Omar as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the Court grants the motion for approval of the Consent Judgment contemplated by Section 5.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

2.1 Commitment to Provide Reformulated Products or Warnings

Subject to the requirements for Medical Grade Products and NSF P155 Certified Products in Section 2.2 below, commencing on the Effective Date and continuing thereafter, Omar shall only purchase for sale in California, manufacture for sale in California, or distribute for sale in California "Reformulated Products." For purposes of this Consent Judgment, Reformulated Products are defined as Products that contain DINP in a maximum concentration of 0.1 percent (1,000 parts per

million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies used to determine DINP content in a solid substance.

2.2 Clear and Reasonable Warnings for Medical Grade Products or NSF P155 Certified Products

Commencing on the Effective Date and continuing thereafter, for non-Reformulated Products that are "Medical Grade Products" or "NSF P155 Certified Products" only, Omar may sell or distribute such Products for sale in California with a clear and reasonable warning in accordance with this Section. For purposes of this Consent Judgment, Medical Grade Products are defined as Products as defined in the Food and Drug Administration's Medical Glove Guidance Manual. For purposes of this Consent Judgment, NSF P155 Certified Products are defined as Products that meet NSF International Certification Protocol P155, in conformity with the provisions of the Federal Food, Drug, and Cosmetic Act. Omar further agrees that any warning utilized will be prominently placed in relation to the Product with such conspicuousness when compared to other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Consent Judgment a clear and reasonable warning shall consist of a warning that contains either of the following statements:

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

WARNING: This product contains a chemical (DINP) that is known to the State of California to cause cancer

If the Product contains a Proposition 65-listed chemical in addition to DINP, that is known to cause birth defects and other reproductive harm:

WARNING: This product contains chemicals that are known to the State of California to cause cancer and birth defects and other reproductive harm.

In the event that Omar sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase

during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided that the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Omar shall pay $ 2,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held. Omar shall deliver its payment in a single check for $ 2,000 made payable to "Anthony E. Held, Client Trust Account." Plaintiffs' counsel shall be responsible for delivering OEHHA's portion of the penalty payment made under this Consent Judgment.

3.2 Reimbursement of Attorney's Fees and Costs

The parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the other settlement terms had been finalized, the Parties negotiated the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs on appeal, if any. Under these legal principles, Omar shall pay $ 17,000 in the form of a check payable to "The Chanler Group" to cover all fees and costs incurred by Held investigating, bringing this matter to Omar's attention, litigating and negotiating a settlement in the public interest.

3.3 Payment Timing; Payments Held in Trust

All payments due under this Consent Judgment shall be held in trust until such time as the Court approves the Parties' settlement. Within fifteen (15) days of the date that this Consent Judgment is fully executed Omar shall deliver the civil penalty payment required by Section 3.1 and the attorneys' fee reimbursement payment required by Section 3.2 to its counsel. Omar's counsel shall provide Held's counsel with written confirmation following his receipt of the settlement funds and, thereafter, hold the payments in trust. Within five (5) days of the Effective Date, Omar's counsel shall deliver the settlement payments to Held's counsel.

3.4 Payment Address

All payments required by this Consent Judgment shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Public Release of Proposition 65 Claims

Held, acting on his own behalf and in the public interest, releases Omar and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees"), and each entity to whom Omar directly or indirectly distributes or sells the Products including, without limitation, its downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any violation arising under Proposition 65 pertaining to the failure to warn about exposures to DINP from Products manufactured, imported, sold, or distributed for sale by Omar prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Releasees and Downstream Releasees with respect to the failure to warn about exposures to DINP in Products manufactured, imported, sold, or distributed for sale by Omar after the Effective Date.

4.2 Held's Individual Release of Claims

Held, in his individual capacity only and *not* in any representative capacity, also provides a release to Omar, Releasees, and Downstream Releasees, which shall be effective as a full and final

accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of Products manufactured, imported, sold, or distributed for sale by Omar before the Effective Date.

4.3 Omar's Release of Held

Omar, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held, and his attorneys and other representatives, for any and all actions taken or statements made by Held, and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICE

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

return receipt requested; or (iii) a recognized overnight courier to the following addresses:

For Omar:

Willie Wilson, President
Omar Medical Supplies, Inc.
600 Holiday Plaza Drive, Suite 130
Matteson, IL 60443

with a copy to:

Levi W. Heath
Barnes & Thornburg LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067

For Held:

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

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

9. <u>COUNTERPARTS; FACSIMILE SIGNATURES</u>

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

10. <u>POST EXECUTION ACTIVITIES</u>

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion Held shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may file or lodge, and appearing at the hearing before the Court if so requested.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

Date: 5/24/2016

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

AGREED TO:

Date: 5/23/16

By: Willie C Wilson
Willie Wilson, President
OMAR MEDICAL SUPPLIES, INC.