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9
10 Attorneys for Plaintiff
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PhD., P.E.,
13 Plaintiff,
14 v.
15 JOHN WILEY & SONS, INC.; and DOES
16 1-150, inclusive,
17 Defendants.

) Case No. RG14729403
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT JOHN WILEY & SONS,**
) **INC.**
)
)
) Date:
) Time:
) Dept: 25
) Judge: Hon. Ronni MacLaren

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, PhD., P.E., and John Wiley & Sons, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
4 P.E. (“Held” or “Plaintiff”) and defendant John Wiley & Sons, Inc. (“JW&S” or “Defendant”),
5 with Held and JW&S collectively referred to as the “Parties.”

6 **1.2 Anthony E. Held, PhD., P.E.**

7 Held is an individual residing in the State of California who seeks to promote awareness
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 John Wiley & Sons, Inc.**

11 Held alleges that JW&S employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code §25249.5, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations.**

15 Held alleges that JW&S has manufactured, imported, distributed and/or sold books with
16 vinyl/PVC covers with DEHP for use in the State of California without the requisite Proposition
17 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause reproductive harm.

19 **1.5 Notice of Violation.**

20 On October 18, 2013, Held served JW&S and various public enforcement agencies with
21 a document entitled “60-Day Notice of Violation” alleging that JW&S violated Proposition 65
22 by failing to warn consumers that books with vinyl/PVC covers exposed users in California to
23 DEHP (“Notice”). To the best of the parties’ knowledge, no public enforcer has prosecuted the
24 allegations set forth in the Notice.

25 **1.6 Complaint.**

26 On June 17, 2014, Held filed a complaint in the Superior Court in and for the County of
27 Alameda against JW&S and Does 1 through 150, *Held v. John Wiley & Sons, Inc., et al.*, Case
28 No. RG14729403 (“Action”), alleging violations of California Health & Safety Code § 25249.6,

1 based on the alleged exposures to DEHP contained in certain books with vinyl/PVC covers sold
2 by JW&S in the State of California.

3 **1.7 No Admission.**

4 The Parties enter into this Consent Judgment as a full and final settlement of all claims
5 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
6 arising out of the facts or conduct alleged therein. JW&S denies the material, factual and legal
7 allegations contained in the Notice and the Complaint, and maintains that it is not a person
8 subject to Proposition 65 and that all of the products it has manufactured, imported, distributed
9 and/or sold in the State of California, including the Covered Products, have been, and are, in
10 compliance with all laws. By execution of this Consent Judgment and agreeing to comply with
11 its terms, JW&S does not admit any facts or conclusions of law including, but not limited to, any
12 facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
13 other statutory, common law or equitable requirements relating to DEHP in Covered Products,
14 such being specifically denied by JW&S. Nothing in this Consent Judgment shall be construed
15 as an admission by JW&S of any fact, conclusion of law, issue of law or violation of law, nor
16 shall compliance with this Consent Judgment constitute or be construed as an admission by
17 JW&S of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
18 Judgment shall prejudice, waive or impair any right, remedy, argument or defense JW&S may
19 have in this or any other future legal proceedings. This Consent Judgment is the product of
20 negotiation and compromise and is accepted by JW&S for purposes of settling, compromising,
21 and resolving issues disputed in this action. However, this Section shall not diminish or
22 otherwise affect the obligations, responsibilities and duties of JW&S under this Consent
23 Judgment.

24 **1.8 Consent to Jurisdiction.**

25 For purposes of this Consent Judgment only, JW&S stipulates that this Court has
26 jurisdiction over JW&S as to the allegations contained in the Complaint, that venue is proper in
27 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
28 this Consent Judgment.

1 **2. DEFINITIONS**

2 **2.1** “Covered Product[s]” means books with vinyl/PVC covers including, but not
3 limited to, the books listed in the Notice, which are distributed and/or sold in the State of
4 California by JW&S.

5 **2.2** “Effective Date” means the date this Consent Judgment is approved by the Court.

6 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

7 **3.1 Reformulation Commitment and Standards.**

8 As of the Effective Date, JW&S shall only manufacture for sale in California Covered
9 Products which contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when
10 analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent
11 methodologies utilized by federal or state agencies for the purpose of determining DEHP
12 content in a solid substance (“Reformulated Covered Products”). By entering into this Consent
13 Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that
14 may be imposed upon JW&S by laws other than Proposition 65, nor do the Parties intend this
15 Consent Judgment to affect any defenses available to JW&S under such other laws.

16 **3.2 Reformulated Covered Products are Deemed to Comply.**

17 Reformulated Covered Products shall be deemed to comply with Proposition 65 as it
18 relates to the presence of DEHP in the Covered Products and shall be exempt from any
19 Proposition 65 warning requirements regarding exposure to DEHP.

20 **4. MONETARY PAYMENTS**

21 In settlement of all the claims referred to in this Consent Judgment, JW&S shall pay a
22 total of \$4,000 in civil penalties in accordance with this Section. The penalty payment will be
23 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
24 of the funds remitted to the California Office of Environmental Health Hazard Assessment
25 (“OEHHA”) and the remaining 25% of the penalty remitted to Held. Within five (5) calendar
26 days of the date this Consent Judgment is approved by the Court, JW&S shall issue two separate
27 checks to: (a) OEHHA, in the amount of \$3,000, and (b) “The Chanler Group in Trust for
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1 Anthony E. Held” in the amount of \$1,000 which shall be delivered to the addresses in Sections
2 4.2(a) and 4.2(b) below.

3 **4.1 Reimbursement of Plaintiff’s Fees and Costs.**

4 The Parties reached an accord on the compensation due to Held and his counsel under
5 general contract principles and the private attorney general doctrine codified at California Code
6 of Civil Procedure section 1021.5, for all work performed (and to be performed) in this matter.
7 Under these legal principles, JW&S shall pay the amount of \$31,000 to reimburse Plaintiff’s
8 fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
9 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval
10 of this Consent Judgment in the public interest. This figure includes Held’s future fees and
11 costs including attorney’s fees to be incurred in seeking judicial approval of this Consent
12 Judgment as well as any other legal work performed after the execution of this Consent
13 Judgment incurred in an effort to obtain finality of the case. Within five (5) calendar days of
14 the date this Consent Judgment is approved by the Court, JW&S shall issue a check for \$31,000
15 payable to “The Chanler Group” and shall be delivered to the address in Section 4.2(a) below.

16 **4.2 Payment Procedures.**

- 17 (a) All payments owed by JW&S to Held under this agreement, which
18 shall be paid within five (5) calendar days of the date this consent
19 judgment is approved by the Court, shall be delivered to the
20 following payment address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710

- 26 (b) All payments owed to OEHHA (EIN: 68-0284486), which also
27 shall be paid within five (5) calendar days of the date this consent
28 judgment is approved by the Court, shall be delivered directly to
OEHHA (Memo line “Prop 65 Penalties”) at the following

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addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in Section 4.2, as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months after the Effective Date, Plaintiff shall meet and confer with JW&S about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid and held in trust herein, if any, under Section 4 (if not waived) upon JW&S's written request.

5. CLAIMS COVERED AND RELEASED

5.1 Held's Release of JW&S.

In consideration of the promises and agreements contained herein and for the payments to be made pursuant to Section 4, above. Held, acting on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby releases JW&S, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and any of its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and

1 any other person or entity to whom they directly or indirectly distribute or sell Covered
2 Products (“Downstream Defendant Releasees”), from any and all claims, including, without
3 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
4 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
5 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or contingent
6 (collectively “Claims”) related to any alleged or actual violation of Proposition 65 that has been
7 asserted by Held in the public interest in his Notice and Complaint regarding the alleged failure
8 to warn about exposure to DEHP in Covered Products manufactured, distributed, or sold by
9 JW&S prior to the Effective Date and hereby waives all rights to institute or participate in,
10 directly or indirectly, any such Claims, against JW&S, Defendant Releasees, and Downstream
11 Defendant Releasees.

12 **5.2 Held’s Waiver of Section 1542.**

13 Held also, in his individual capacity only and not in his representative capacity, provides
14 a general release herein which shall be effective as a full and final accord and satisfaction, as a
15 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
16 claims, liabilities and demands of Held of any nature, character or kind, known or unknown,
17 suspected or unsuspected, arising out of alleged exposure to, or failure to warn of, any chemical
18 listed under Proposition 65 with respect to the Covered Products manufactured, distributed or
19 sold by JW&S prior to the Effective Date. Held acknowledges that he is familiar with Section
20 1542 of the California Civil Code, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
22 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
23 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.

24 Held, in his individual capacity only and *not* in his representative capacity, expressly
25 waives and relinquishes any and all rights and benefits which he may have under, or which may
26 be conferred on his by the provisions of Section 1542 of the California Civil Code as well as
27 under any other state or federal statute or common law principle of similar effect, to the fullest
28 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In

1 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
2 complete release notwithstanding the discovery or existence of any such additional or different
3 claims or facts arising out of the released matters.

4 The Parties further understand and agree that this release shall not extend upstream to any
5 entities, other than to JW&S and to Defendant Releasees and Downstream Defendant Releasees,
6 that manufactured the Covered Products or any component parts thereof, or any distributors or
7 suppliers who sold the Covered Products or any component parts thereof to JW&S or Defendant
8 Releasees.

9 **5.3 JW&S's Release and Waiver.**

10 JW&S waives any and all Claims against Held, his attorneys, and his representatives for
11 any and all actions taken or statements made (or those that could have been taken or made) by
12 Held and his attorneys and his representatives, whether in the course of investigating claims or
13 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect
14 to the Covered Products.

15 JW&S also provides a general release herein to Held which shall be effective as a full
16 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
17 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of JW&S of any
18 nature, character or kind, known or unknown, suspected or unsuspected, related to allegations in
19 the Complaint regarding exposure to DEHP in the Covered Products manufactured, distributed,
20 or sold by JW&S prior to the Effective Date. JW&S acknowledges that it is familiar with
21 Section 1542 of the California Civil Code, which provides as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
24 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.

25 JW&S expressly waives and relinquishes any and all rights and benefits which it may have
26 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
27 Code, as well as under any other state or federal statute or common law principle of similar
28 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the

1 released matters. In furtherance of such intention, the release hereby given shall be and remain
2 in effect as a full and complete release notwithstanding the discovery or existence of any such
3 additional or different claims or facts arising out of the released matters.

4 **6. COURT APPROVAL**

5 **6.1 Waiver of Trial.**

6 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on
7 the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of
8 any and all interim rulings, including all pleading, procedural, and discovery orders.

9 **6.2 Court Approval Required.**

10 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
11 noticed motion is required to obtain judicial approval of this Consent Judgment, which Held
12 shall file and which JW&S shall support as reasonably necessary. The Parties agree to mutually
13 employ their and their respective counsel's best efforts to support the entry of this agreement as a
14 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
15 manner. If this Consent Judgment is not approved by the Court: (a) this Consent Judgment and
16 any and all prior agreements between the Parties merged herein shall terminate and become null
17 and void, and the action shall revert to the status that existed prior to the execution date of this
18 Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
19 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
20 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
21 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
22 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

23 **7. MISCELLANEOUS**

24 **7.1 Governing Law.**

25 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California, and shall apply only to Covered Products offered for sale in the State of California.
27 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
28 law generally, or as to the Covered Products, then JW&S may provide written notice to Held of

1 any asserted change in the law, and shall have no further obligations pursuant to this Consent
2 Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **7.2 Contract Interpretation.**

4 The Parties, including their counsel, have participated in the preparation of this Consent
5 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent
6 Judgment was subject to revision and modification by the Parties and has been accepted and
7 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
9 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
10 agrees that any statute or rule of construction providing that ambiguities are to be resolved
11 against the drafting Party should not be employed in the interpretation of this Consent Judgment
12 and, in this regard, the Parties hereby waive California Civil Code § 1654.

13 **8. NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant
15 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
16 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by
17 the other Party at the following addresses:

18 To JW&S:

19 John Wiley & Sons, Inc.
20 111 River Street
21 Hoboken, NJ 07030-5774
Attn: General Counsel

22 With a copy to:

23 SEYFARTH SHAW LLP
24 560 Mission Street, Suite 3100
San Francisco, California 94105
Attn: Jay W. Connolly

25 To Held:

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

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

3 **9. MODIFICATION**

4 **9.1** Modification. This Consent Judgment may be modified by written agreement of
5 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
6 Party and entry of a modified Consent Judgment by the court.

7 **9.2** Subsequent Legislation. If, subsequent to the Effective Date, legislation or
8 regulation is adopted that addresses the DEHP content of Covered Products sold in California
9 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
10 in Section 3.1 of this Consent Judgment for good cause shown.

11 **9.3** Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment or
12 to allege a violation thereof shall first attempt in good faith to meet and confer for a period of 30
13 days with the other Party prior to filing a motion to modify or enforce the Consent Judgment.

14 **10. ENTIRE AGREEMENT**

15 This Consent Judgment contains the sole and entire agreement and understanding of the
16 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
18 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
19 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
20 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
21 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
22 waiver unless set forth in writing between the Parties.

23 **11. RETENTION OF JURISDICTION**

24 This Court shall retain jurisdiction of this matter to implement or modify the Consent
25 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision
26 thereof, under C.C.P. § 664.6.

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1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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 agree to all of the terms and conditions of this
8 Consent Judgment.

9 **AGREED TO:**

10 Date: February 27, 2015

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13 By: Anthony E. Held
14 Plaintiff Anthony E. Held, PhD., P.E.

15 **AGREED TO:**

16 Date: February 27, 2015

17 **JOHN WILEY & SONS, INC.**

18
19 By: Joseph J. Barber
20 Name: Joseph J Barber
21 Title: Senior Attorney

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