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16 Attorneys for Defendant
17 SAS SAFETY CORPORATION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,

Plaintiff,

v.

SAS SAFETY CORPORATION, and DOES 1-
150, inclusive,

Defendants.

Case No. RG15761231

[PROPOSED]
CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

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, SAS Safety Corporation (“SAS”), with Held and SAS each referred to
5 individually as a “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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that SAS has manufactured, imported, distributed, sold and/or offered for sale in
16 California, hearing protection with vinyl/PVC ear cushions containing di(2-ethylhexyl)phthalate
17 (“DEHP”) and vinyl/PVC aprons containing DEHP. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as hearing protection
21 with vinyl/PVC ear cushions including, but not limited to, *Foldable Earmuff, P/N 6110, UPC #7*
22 *81311 06110 1*, and vinyl/PVC aprons including, but not limited to, *SAS Safety PVC Apron, PN 6821,*
23 *UPC #7 81311 06821 6*, manufactured, imported, distributed, sold and/or offered for sale by SAS in
24 the State of California, hereinafter “Products.”

25 **1.6 Notice of Violation**

26 On June 4, 2014, Held served SAS and various public enforcement agencies with a document
27 entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Held
28 alleged that SAS was in violation of California Health & Safety Code § 25249.6 for failing to warn

1 consumers that its hearing protection with vinyl/PVC ear cushions exposed users in the State of
2 California to DEHP.

3 On March 13, 2015, Held served SAS, Sears Holdings Corporation, Kmart Corporation,
4 Amazon.com, Inc. and various public enforcement agencies with a document entitled "Supplemental
5 60-Day Notice of Violation" ("Supplemental Notice") that provided the recipients with notice that
6 Held alleged that SAS and Amazon.com, Inc. were in violation of California Health & Safety Code
7 § 25249.6 for failing to warn consumers that SAS' vinyl/PVC aprons exposed users in the State of
8 California to DEHP, and alleged that SAS, Sears Holding Corporation and Kmart Corporation were
9 in violation of California Health & Safety Code § 25249.6 for failing to warn consumers that that
10 SAS' hearing protection with vinyl/PVC ear cushions exposed users in the State of California to
11 DEHP.

12 The Notice and Supplemental Notice are collectively referred to herein as the "Notices." To
13 the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting
14 the allegations set forth in the Notices.

15 1.7 Complaint

16 On March 6, 2015, Held filed the instant action against SAS for the alleged violations of
17 Health & Safety Code § 25249.6 that are the subject of the Notice. On or about July 29, 2015, Held
18 filed a first amended complaint ("Complaint") against SAS for the alleged violations of Health &
19 Safety Code § 25249.6 that are the subject of the Notices.

20 1.8 No Admission

21 SAS denies the material, factual, and legal allegations contained in the Notices and
22 Complaint, and maintains that all of the products that it has sold in California, including the Products,
23 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed
24 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
25 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
26 finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by
27 SAS. This section shall not, however, diminish or otherwise affect SAS' obligations, responsibilities,
28 and duties under this Consent Judgment.

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
3 jurisdiction over SAS as to the allegations in the Complaint, that venue is proper in Alameda County,
4 and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

5 **1.10 Execution Date**

6 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date the
7 Consent Judgment is signed by all Parties.

8 **1.11 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
10 Consent Judgment is approved by the Court.

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

12 Commencing on the Execution Date, SAS shall only manufacture, import, distribute, ship, sell
13 or offer for sale to consumers in the State of California Products that are: (1) sold or shipped with
14 one of the clear and reasonable warnings set forth in subsection 2.1; or (2) exempt pursuant to Section
15 2.2 as Reformulated Products as defined in Section 2.3.

16 **2.1 Product Labeling**

17 Each warning shall be prominently placed with such conspicuousness as compared with other
18 words, statements, designs or devices as to render it likely to be read and understood by an ordinary
19 individual under customary conditions before purchase or use. Each warning shall be provided in a
20 manner such that the consumer or user understands to which specific Product(s) the warning applies,
21 so as to minimize the risk of consumer confusion. SAS may affix a warning to the packaging,
22 labeling or directly on any Products that are not Reformulated Products sold in retail outlets in
23 California that states:

WARNING: This product contains DEHP, a chemical
known to the State of California to cause
birth defects or other reproductive harm.

or

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WARNING: This product will expose you to DEHP, a chemical known to the State of California to cause birth defects (or other reproductive harm). For more information go to www.P65Warnings.ca.gov.¹



2.2 Exceptions to Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl (“DBP”), butyl benzyl phthalate (“BBP”) and Diisononyl phthalate (“DINP”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP, DBP, BBP and DINP content in a solid substance. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon SAS by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to SAS under laws other than Proposition 65.

2.4 Vendor Notification Requirement

To the extent it has not already done so, no more than ten (10) days after the Execution Date, SAS shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its vendors of Products and of accessible component parts used in the Products that will be sold or offered for sale to consumers in California, and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as defined in Section 2.3.

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¹ The diamond shaped border in the standard (Globally Harmonized System) pictogram “” for toxic hazards is to appear in the color red. The word “WARNING” shall be written in all capital letters, in bold print no smaller than 10 point type; the remainder of the warning language shall be written in 8 point type font or larger. SAS may enclose the text of the warning message in a box.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, SAS shall pay a total of
4 \$15,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in
5 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
6 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
7 remaining 25% of the penalty retained by Held, as follows:

8 **3.1.1 Initial Civil Penalty.** SAS shall pay an initial civil penalty in the amount of
9 \$5,000.

10 **3.1.2 Final Civil Penalty.** On or before November 1, 2016, SAS shall pay a final
11 civil penalty in the amount of \$10,000 with one check made payable to “Anthony Held, Client Trust
12 Account.” The final civil penalty shall be waived in its entirety, however, if, no later than one year
13 after the Effective Date, an officer of SAS provides Held with written certification that, as of the date
14 of the written certification and continuing into the future, SAS has met the reformulation standard
15 specified in Section 2.3 above, such that all Products manufactured, imported, sold and/or distributed
16 for sale in California by SAS are Reformulated Products. The certification in lieu of a final civil
17 penalty payment provided by this Section is a material term, and time is of the essence. Any such
18 certification shall be delivered to the address listed in Section 3.5 below.

19 **3.2 Representations**

20 SAS represents that the sales data and other information concerning its Products sales
21 information, knowledge of DEHP, prior reformulation and/or warning efforts, that it provided to Held
22 in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this
23 Settlement Agreement and a material factor upon which Held relied to determine the amount of civil
24 penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the
25 Effective Date, Held discovers and presents to SAS, evidence demonstrating that the preceding
26 representation and warranty was materially inaccurate, then SAS shall have 30 days to meet and
27 confer regarding Held’s contention. Should this 30 day period pass without any such resolution
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1 between Held and SAS, Held shall be entitled to file a formal legal claim including, but not limited to,
2 a claim for damages for breach of contract.

3 **3.3 Reimbursement of Held's Fees and Costs**

4 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
6 be resolved after the material terms of the agreement had been settled. Shortly after all other
7 settlement terms had been finalized, SAS expressed a desire to resolve the fee and costs issue. The
8 Parties then attempted to (and did) reach an accord on the compensation due Held and his counsel
9 under general contract principles and the private attorney general doctrine codified at California Code
10 of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs incurred
11 on appeal, if any. Under these legal principles, SAS shall pay \$40,000 for fees and costs incurred
12 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be
13 incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the
14 public interest.

15 **3.4 Payments Held In Trust**

16 SAS shall deliver all payments required by Sections 3.1.1 and 3.3 to its counsel within five (5)
17 days of the Execution Date. SAS' counsel shall confirm receipt of settlement funds in writing to
18 Held's counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the
19 motion for approval of the Parties' settlement contemplated by Section 5. Within five (5) days of the
20 Effective Date, SAS' counsel shall deliver the following settlement payments to Held's counsel at the
21 address provided in Section 3.5.

- 22 (i) For the civil penalty payment set forth in Section 3.1.1, one check
- 23 payable to "Anthony Held, Client Trust Account".
- 24 (ii) For reimbursement of fees and costs set forth in Section 3.3, one check
- 25 payable to "The Chanler Group".

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1 **3.5 Payment Procedures**

2 All payments owed to Plaintiff and his counsel, pursuant to Sections 3.1 and 3.3 shall be
3 delivered to the following address:

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

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Held's Release of Proposition 65 Claims**

11 Held, acting on his own behalf and in the public interest, releases SAS and its predecessors,
12 successors, subsidiaries, affiliated entities, directors, officers, employees, representatives, agents and
13 attorneys ("Releasees") and each entity to whom SAS directly or indirectly distributes or sells the
14 Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees,
15 cooperative members, licensees and retailers, including Sears Holdings Corporation, Kmart
16 Corporation, Amazon.com, Inc., Rite Aid Corporation and Rakuten.com ("Downstream Releasees")
17 from all claims for violations of Proposition 65 up through the Effective Date based on exposures to
18 DEHP from the Products as set forth in the Notices. Compliance with the terms of this Consent
19 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
20 Products sold by SAS before the Effective Date as set forth in the Notices.

21 **4.2 Held's Individual Release of Claims**

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

28 **4.3 SAS's Release of Held**

 SAS on behalf of itself, its past and current agents, representatives, attorneys, successors,
and/or assignees, hereby waives any and all claims against Held, his attorneys and other

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

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

10 If, subsequent to the Execution Date, any provision is held by a court to be unenforceable, the
11 validity of the remaining provisions shall not be 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 if any of the provisions of this Settlement
16 Agreement are rendered inapplicable or no longer required as a result of any such repeal or
17 preemption or rendered inapplicable by reason of law generally as to the Products, then SAS shall
18 provide written notice to Held of any asserted change in the law, and shall have no further obligations
19 pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so
20 affected. Nothing in this Settlement Agreement shall be interpreted to relieve SAS from any
21 obligation to comply with any pertinent state or federal toxics control law.

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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-class
4 (registered or certified mail) return receipt requested, or (iii) sent by overnight courier, to one party by
5 the other party at the following addresses:

6 For SAS: Ken Watson, President
7 SAS Safety Corporation
8 3031 Gardenia Avenue
 Long Beach, CA 90807

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

9 With a copy on behalf of SAS to:

10 Gary A. Wexler, Esq.
11 Thompson Coburn LLP
 2029 Century Park East, 19th Floor
 Los Angeles, CA 90067

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

14 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

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

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

19 Held agrees to comply with the reporting form requirements referenced in California Health &
20 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
21 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the
22 settlement. In furtherance of obtaining such approval, Held and SAS agree to mutually employ their
23 best efforts, and those of their counsel, to support the entry of this agreement as a Consent Judgment
24 and to obtain judicial approval of the settlement in a timely manner. For purposes of this section,
25 “best efforts” shall include, at a minimum, cooperating on the drafting and filing of the necessary
26 moving papers and supporting the motion for judicial approval.

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11. MODIFICATION

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

12. AUTHORIZATION

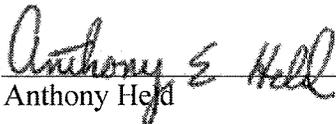
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 9/14/2015

Date: _____

By: 
Anthony Held

By: _____
Ken Watson, President
SAS Safety Corporation

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
7 and agree to all of the terms and conditions contained herein.

8 **AGREED TO:**

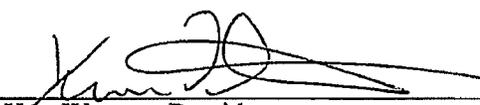
9 Date: _____

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11 By: _____

12 Anthony Held

AGREED TO:

9 Date: 9-17-15

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11 By:  _____

12 Ken Watson, President
SAS Safety Corporation

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