

FILED

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KIM TURNER, Court Exec. Officer
MARIN CO. SUPERIOR COURT
By: E. Turner D. 2012

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
81 Throckmorton Avenue, Suite #202
3 Mill Valley, CA 94941
Telephone: (415) 388-0911
4 Facsimile: (415) 388-9911

5 Attorneys for Plaintiff
ANTHONY HELD, PH.D.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY HELD, PH.D.,

13 Plaintiff,

14 v.

15 ROSS ACQUISITION CO. and DOES 1-150,

16 Defendants.
17

Case No. CIV 1203199

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Action Filed : July 12, 2012

1 In the above-entitled action, Plaintiff ANTHONY HELD, PH.D. and Defendant ROSS
2 ACQUISITION CO., having agreed through their respective counsel that a judgment be entered
3 pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of this
4 Proposition 65 action, and following the issuance of an order approving the Parties' Consent to
5 Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered
7 in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.
10

11 **IT IS SO ORDERED.**

12
13 Dated: 11/28/12

ROY CHERNUS

Hon. Roy O. Chernus
Judge Of The Superior Court

EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY HELD

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

11 ANTHONY E. HELD,

12 Plaintiff,

13 v.

14 ROSS ACQUISITION CO. and DOES 1-150,

15 Defendants.

Case No. CIV 1203199

**CONSENT TO JUDGMENT AS TO
DEFENDANT ROSS ACQUISITION CO.**

Action Filed: July 12, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Anthony E. Held,
4 Ph.D., P.E., (“Held” or “Plaintiff”) and Defendant Ross Acquisition Co. (“Ross Acquisition”) with
5 Held and Ross Acquisition collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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 products.

10 **1.3 Defendant**

11 Ross Acquisition employs 10 or more persons and is 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 §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Ross Acquisition manufactured, distributed and/or sold, in the State of
16 California, certain types of plush stuffed animal toys that included components composed of
17 material containing DEHP, including, but not limited to, Galerie Plush Bear, Dale Jr. 88,
18 #211023134, that exposed users to DEHP, without first providing “clear and reasonable
19 warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant
20 pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On January 31, 2012, Held served Defendant and various public enforcement agencies
23 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of DEHP, a toxic chemical found in and on their
26 plush stuffed animal toy products sold in California. To the best of the Parties’ knowledge, no
27 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
28 Notice.

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1.6 Complaint

On July 12, 2012, Held, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of Marin, alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in the referenced plush toy products (the “Action”).

1.7 No Admission

This Consent To Judgment resolves claims that are denied and disputed by Ross Acquisition. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendant denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent To Judgment constitute or be construed as an admission by the Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Ross Acquisition’s obligations, responsibilities, and duties under this Consent To Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over Ross Acquisition as to the allegations contained in the Complaint, that venue is proper in County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

///

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the July 12, 2012, Complaint.

3 2.2 The term "Covered Products" means any plush stuffed animal toys composed of,
4 or with components composed of material containing DEHP, including, but not limited to,
5 Galerie Plush Bear, Dale Jr. 88, #211023134.

6 2.3 The term "Effective Date" shall mean June 15, 2012.

7 2.4 The term "DEHP Free" Covered Products shall mean Covered Products
8 containing materials or other components that may be handled, touched or mouthed by a
9 consumer, and which components contain less than or equal to 1,000 parts per million ("ppm")
10 of DEHP as determined by a minimum of duplicate quality controlled test results using
11 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

12 **3. INJUNCTIVE RELIEF**

13 **3.1 Formulation Commitment**

14 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,
15 manufacture or cause to be manufactured any Covered Product for distribution to or sale in the
16 California that is not DEHP Free and Defendant shall also not distribute, cause to be distributed,
17 sell or cause to be sold, in California, any Covered Product that is not DEHP Free. For every
18 Covered Product ordered, caused to be ordered, manufactured or caused to be manufactured for
19 distribution to or sale in California after the Effective Date, and for every Covered Product
20 distributed, caused to be distributed, sold or caused to be sold in California by Defendant,
21 Defendant shall maintain copies of all testing of such products demonstrating compliance with
22 this section.

23 **3.2 Previously Obtained or Distributed Covered Products.**

24 **3.2.1 Product Warnings**

25 Commencing on the Effective Date, and until such date three (3) months thereafter, Ross
26 Acquisition shall not sell, ship, or offer to be sold or shipped for sale in California any Covered
27
28

1 Products unless such Covered Products are DEHP Free under Section 2.4 or are sold or shipped
2 with one of the clear and reasonable warnings set forth hereafter.

3 Each warning shall be prominently placed with such conspicuousness as compared with
4 other words, statements, designs, or devices as to render it likely to be read and understood by
5 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
6 be provided in a manner such that the consumer or user understands to which *specific* Covered
7 Product the warning applies, so as to minimize the risk of consumer confusion.

8 (a) **Retail Store Sales.**

9 (i) **Product Labeling.** Ross Acquisition may affix a warning to the
10 packaging, labeling, or directly on any Covered Products sold at a retail outlet of Defendant in
11 California that states:

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

14 (ii) **Point-of-Sale Warnings.** Alternatively, Ross Acquisition may
15 provide warning signs in the form below to retail outlets in California, which stores it is
16 reasonably aware of having sold the Covered Products or having inventory or orders of the
17 Covered Products, with instructions to post the signs *in immediate proximity* to the point of
18 display of any and all such Covered Products for the benefit of its customers.

19 **WARNING:** This product contains DEHP, a chemical
20 known to the State of California to cause birth
21 defects and other reproductive harm.

22 (b) **Mail Order Catalog and Internet Sales.** In the event that Ross Acquisition
23 sells any Covered Products via mail order catalog or the Internet to customers located in
24 California any such catalog or Internet site offering any Covered Product for sale shall include a
25 warning in the catalog or within the website, identifying the specific Covered Product to which
26 the warning applies, as specified in Sections 3.2.2(b)(i) and (ii).

27 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
28 order catalog must be in the same type size or larger than the Covered Product description text

1 within the catalog. The following warning shall be provided on the same page and in the same
2 location as the display and/or description of the Covered Product:

3 **WARNING:** This product contains DEHP, a chemical
4 known to the State of California to cause birth
5 defects and other reproductive harm.

6 Where it is impracticable to provide the warning on the same page and in the same
7 location as the display and/or description of the Covered Product, Defendant may utilize a
8 designated symbol to cross reference the applicable warning and shall define the term
9 “designated symbol” with the following language on the inside of the front or back cover of the
10 catalog or on the same page as any order form for the Covered Product(s):

11 **WARNING:** Certain products identified with this
12 symbol ▼ and offered for sale in this
13 catalog contain DEHP, a chemical known
14 to the State of California to cause birth
15 defects and other reproductive harm.

16 The designated symbol must appear on the same page and in close proximity to the
17 display and/or description of the Covered Product. On each page where the designated symbol
18 appears, Ross Acquisition must provide a header or footer directing the consumer to the
19 warning language and definition of the designated symbol.

20 If Defendant elects to provide warnings in any mail order catalog, then the warnings
21 must be included in all catalogs offering to sell one or more Covered Products printed after the
22 Effective Date.

23 (ii) **Internet Website Warning.** A warning must be given in
24 conjunction with the sale of any Covered Products via the Internet, provided it appears either:
25 (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as
26 the order form for a Covered Product; (c) on the same page as the price for any Covered Product;
27 or (d) on one or more web pages displayed to a purchaser during the checkout process. The
28 following warning statement shall be used and shall appear in any of the above instances
adjacent to or immediately following the display, description, or price of the Covered Product
for which it is given in the same type size or larger than the Covered Product description text:

1 **WARNING:** This product contains DEHP, a chemical
2 known to the State of California to cause birth
3 defects and other reproductive harm.

4 Alternatively, the designated symbol may appear adjacent to or immediately following
5 the display, description, or price of the Covered Product for which a warning is being given,
6 provided that the following warning statement also appears elsewhere on the same web page, as
7 follows:

8 **WARNING:** Products identified on this page with the
9 following symbol ▼ contain DEHP, a
10 chemical known to the State of California
11 to cause birth defects and other
 reproductive harm.

12 3.2.2 Commencing three (3) months after the Effective Date, Ross Acquisition shall
13 discontinue all sales of any Covered Products that are not DEHP Free in California, regardless of
14 compliance with Section 3.2.1.

15 3.2.3 No later than six (6) months after the Effective Date, Ross Acquisition shall
16 destroy, in a manner compliant with any environmental or other waste disposal regulations, all
17 Covered Products that are not DEHP Free in the custody, control or possession of Defendant or
18 otherwise remaining in the possession of any retail store or internet distribution warehouse
19 controlled, owned or operated by Defendant.

20 3.2.4 Ross Acquisition shall maintain records of compliance correspondence, inventory
21 reports or other communication confirming compliance with §3.2.3 for three (3) years from the
22 Effective Date and shall produce copies of such records upon written request by Held.

23 **4. MONETARY PAYMENTS**

24 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

25 Ross Acquisition shall make a payment of \$12,000.00 to be apportioned in accordance
26 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
27 earmarked for the State of California’s Office of Environmental Health Hazard Assessment
28 (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Held.

1 **4.2 Reduction in Penalty Payments**

2 Ross Acquisition may reduce the total penalty payment due pursuant to section 4.1 above
3 by satisfying the following penalty offset options (in which event the division of remaining total
4 penalties due shall be proportioned between OEHHA and Held in the same ratio as set forth in
5 section 4.1 above):

6 (a) Defendant may realize a \$1,000.00 reduction in the total penalty amount due under
7 section 4.1 above if, no later than August 3, 2012, Ross Acquisition provides to Plaintiff, care of
8 his attorneys, a letter certification, signed by a director or officer, confirming that as of the date of
9 the letter certification, said party either has destroyed any Covered Products that are not DEHP
10 Free in the custody, control or possession of Defendant or otherwise remaining in the possession
11 of any retail store or internet distribution warehouse controlled, owned or operated by
12 Defendant or that Defendant has no such remaining inventory of Covered Products that are not
13 DEHP Free.

14 (b) Defendant may realize a \$3,000.00 reduction in the total penalty amount due under
15 section 4.1 above if, no later than August 3, 2012, Ross Acquisition provides to Plaintiff, care of
16 his attorneys, a letter certification, signed by a director or officer, confirming that Ross
17 Acquisition agrees that the term "in California" in section 3.1 above shall be deemed to have
18 been replaced by the term "within the United States."

19 **4.3 Augmentation of Penalty Payments**

20 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
21 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
22 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
23 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
24 distributed by Ross Acquisition in sales volumes materially different than those identified by
25 Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional
26 penalty amount of \$150 per quantity of Covered Product sold prior to execution of this
27 Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any
28 reasonable, additional attorney fees expended by plaintiff in discovering such additional

1 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such
2 additional penalties and attorney fees under this Section. After service of such demand,
3 defendant shall have thirty (30) days to agree to the amount of fees and penalties owing by
4 Defendant and submit such payment to plaintiff in accordance with the method of payment of
5 penalties and fees identified in Sections 4.5. Should this thirty (30) day period pass without any
6 such resolution between the parties and payment of such additional penalties and fees, plaintiff
7 shall be entitled to file a formal legal claim for damages for breach of this contract and shall be
8 entitled to all reasonable attorney fees and costs relating to such claim.

9 **4.4 Reimbursement of Plaintiff's Fees and Costs**

10 The Parties acknowledge that Held and his counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
12 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
13 Ross Acquisition then expressed a desire to resolve the fee and cost issue shortly after the other
14 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
15 the compensation due to Held and his counsel under general contract principles and the private
16 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
17 work performed in this matter, except fees that may be incurred on appeal. Under these legal
18 principles, Ross Acquisition shall pay the amount of \$31,500.00 for fees and costs incurred
19 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
20 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
21 Judgment in the public interest.

22 **4.5 Payment Procedures**

23 **4.5.1 Funds Held In Trust:** All payments required by Sections 4.1 and 4.4 shall
24 delivered on or before August 3, 2012, to either The Chanler Group or the attorney of record for
25 Ross Acquisition, and shall be held in trust pending the Court's approval of this Consent
26 Judgment.

27 Payments delivered to The Chanler Group shall be made payable, as follows:

- 28 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in

1 the amount of \$9,000.00 (or 75% of any contractually reduced penalty);

2 (b) One check made payable to "The Chanler Group in Trust for Held" in the
3 amount of \$3,000.00 (or 25% of any contractually reduced penalty); and

4 (c) One check made payable to "The Chanler Group in Trust" in the amount
5 of \$31,500.00.

6 Payments delivered to Farella Braun + Martel LLP shall be made payable, as
7 follows:

8 (a) One check made payable to "Farella Braun + Martel LLP in Trust for
9 OEHHA" in the amount of \$9,000.00 (or 75% of any contractually reduced
10 penalty);

11 (b) One check made payable to "Farella Braun + Martel LLP in Trust for
12 Held" in the amount of \$3,000.00 (or 25% of any contractually reduced penalty);
13 and

14 (c) One check made payable to "Farella Braun + Martel LLP in Trust for The
15 Chanler Group" in the amount of \$31,500.00.

16 If Ross Acquisition elects to deliver payments to its attorney of record, such
17 attorney of record shall: (a) confirm in writing within five days of receipt that the funds
18 have been deposited in a trust account; and (b) within two days of the date of the
19 hearing on which the Court approves the Consent Judgment, deliver the payment to The
20 Chanler Group in three separate checks, as follows:

21 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
22 the amount of \$9,000.00 (or 75% of any contractually reduced penalty);

23 (b) One check to "The Chanler Group in Trust for Held" in the amount of
24 \$3,000.00 (or 75% of any contractually reduced penalty); and

25 (c) One check to "The Chanler Group" in the amount of \$31,500.00.

26 Any failure by defendant to deliver the above-referenced payments to The Chanler
27 Group within two days of the date of the hearing on which the Court approves the
28 Consent To Judgment shall result in imposition of a 10% simple interest assessment on

1 the undelivered payment(s) until delivery.

2 **4.5.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
3 and the settlement funds have been transmitted to plaintiff's counsel, Ross Acquisition shall
4 issue three separate 1099 forms, as follows:

5 (a) The first 1099 shall be issued to the Office of Environmental Health
6 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
7 the amount of \$9,000.00 (or 75% of any contractually reduced penalty);

8 (b) The second 1099 shall be issued to Held in the amount of \$3,000.00 (or
9 25% of any contractually reduced penalty), whose address and tax identification
10 number shall be furnished upon request; and

11 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
12 the amount of \$31,500.00

13 **4.5.3 Payment Address:** All payments to the Chanler Group shall be delivered
14 to the following payment address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **5. CLAIMS COVERED AND RELEASE**

21 **5.1 Held's Releases of Ross Acquisition**

22 5.1.1 This Consent To Judgment is a full, final, and binding resolution between Held,
23 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
24 assignees, and in the interest of the general public, and Ross Acquisition and its attorneys,
25 successors, licensors and assigns ("Defendant Releasees"), and all entities to whom Ross
26 Acquisition directly or indirectly distribute or sell Covered Products, including but not limited to
27 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
28 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
have been asserted against Defendant Releasees and Downstream Defendant Releasees

1 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
2 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
3 the Effective Date. Ross Acquisition' compliance with this Consent To Judgment shall constitute
4 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products
5 after the Effective Date.

6 5.1.2 Held on behalf of himself, his past and current agents, representatives, attorneys,
7 successors, and/or assignees, and in the interest of the general public, hereby waives with
8 respect to Covered Products all rights to institute or participate in, directly or indirectly, any
9 form of legal action and releases all claims, including, without limitation, all actions, and causes
10 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
13 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
14 arise under Proposition 65 or any other statutory or common law claims that were or could have
15 been asserted in the public interest, as such claims relate to Defendant Releasees' and
16 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
17 Chemical contained in the Covered Products.

18 5.1.3 Held also, in his individual capacity only and *not* in his representative capacity,
19 provides a general release herein which shall be effective as a full and final accord and
20 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
21 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known
22 or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint as to
23 Covered Products manufactured, distributed or sold by Defendant Releasees. Held
24 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides
25 as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
28 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.

1 Held, in his individual capacity only and *not* in his representative capacity, expressly
2 waives and relinquishes any and all rights and benefits which he may have under, or which may
3 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
4 under any other state or federal statute or common law principle of similar effect, to the fullest
5 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
6 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
7 complete release notwithstanding the discovery or existence of any such additional or different
8 claims or facts arising out of the released matters.

9 This Section 5.1 release is expressly limited to those claims that arise under Proposition
10 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
11 identification of the Listed Chemical contained in the Covered Products and as such claims are
12 identified in the Proposition 65 60-Day Notice to Defendant.

13 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
14 thirty (30) days after the Effective Date and does not release any person, party or entity from any
15 liability for any violation of Proposition 65 regarding the Covered Products that occur more than
16 thirty (30) days after the Effective Date.

17 The Parties further understand and agree that this Section 5.1 release shall not extend
18 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
19 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
20 component parts thereof to Defendant.

21 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
22 respective rights to a hearing or trial on the allegations of the Complaint.

23 **5.2 Ross Acquisition' Release of Held**

24 5.2.1 Ross Acquisition waives any and all claims against Held, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been
26 taken or made) by Held and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
28 and/or with respect to the Covered Products.

1 5.2.2 Ross Acquisition also provides a general release herein which shall be effective as
2 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
3 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Ross Acquisition of
4 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
5 subject matter of the Action. Ross Acquisition acknowledges that it is familiar with Section 1542
6 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
9 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.

10 Ross Acquisition expressly waives and relinquishes any and all rights and
11 benefits that it may have under, or which may be conferred on it by the provisions of
12 Section 1542 of the California Civil Code as well as under any other state or federal
13 statute or common law principle of similar effect, to the fullest extent that it may lawfully
14 waive such rights or benefits pertaining to the released matters. In furtherance of such
15 intention, the release hereby given shall be and remain in effect as a full and complete
16 release notwithstanding the discovery or existence of any such additional or different
17 claims or facts arising out of the released matters.

18 **6. SEVERABILITY**

19 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
20 this Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable
21 provisions remaining shall not be adversely affected, unless the Court finds that any
22 unenforceable provision is not severable from the remainder of the Consent To Judgment.

23 **7. COURT APPROVAL**

24 This Consent To Judgment is effective upon execution but must also be approved by the
25 Court. The Consent To Judgment shall become null and void if, for any reason, it is not
26 approved and entered by the Court within nine months after it has been fully executed by all
27 Parties. If the Consent To Judgment becomes null and void after any payment of monies under
28

1 this agreement to The Chanler Group in trust, such monies shall be returned to defendant by
2 payment of such monies to its counsel, in trust for Ross Acquisition.

3 **8. GOVERNING LAW**

4 The terms of this Consent To Judgment shall be governed by the laws of the State of
5 California.

6 **9. NOTICES**

7 When any Party is entitled to receive any notice under this Consent To Judgment, the
8 notice shall be sent by certified mail and electronic mail to the following:

9 For Ross Acquisition to:

10 Richard Ross, President
11 Ross Acquisition Co.
12 3380 Langley Drive
13 Hebron, KY 41048

14 With copy to their counsel at

15 John R. Epperson, Esq.
16 Farella Braun + Martel LLP
17 Russ Building
18 235 Montgomery Street
19 San Francisco, CA 94104

20 For Held to:

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

26 Any Party may modify the person and address to whom the notice is to be sent by sending each
27 other Party notice by certified mail and/or other verifiable form of written communication.

28 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Held agrees to comply with the reporting form requirements referenced, in California
Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

1 **11. MODIFICATION**

2 This Consent To Judgment may be modified only: (1) by written agreement of the
3 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To
4 Judgment by the Court.

5 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

6 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
7 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
8 obtaining such approval, Held and Ross Acquisition and their respective counsel agree to
9 mutually employ their best efforts to support the entry of this agreement as a Consent To
10 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal
11 judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or
12 Ross Acquisition to impede judicial approval of this Consent To Judgment shall subject such
13 impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their
14 efforts to meet or oppose Ross Acquisition' impeding conduct.

15 **13. ENTIRE AGREEMENT**

16 This Consent To Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments, and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
21 deemed to exist or to bind any of the Parties.

22 **14. ATTORNEY'S FEES**

23 14.1 Should Held prevail on any motion, application for order to show cause or other
24 proceeding to enforce a violation of this Agreement, Held shall be entitled to his reasonable
25 attorney fees and costs incurred as a result of such motion, order or application, consistent with
26 C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to show cause or
27 other proceeding to enforce a violation of this Consent Judgment, Defendant may be entitled to
28 its reasonable attorney fees and costs incurred as a result of such motion, order or application

1 upon a finding that Held's prosecution of the motion or application lacked substantial
2 justification. For purposes of this Agreement, the term substantial justification shall carry the
3 same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

4 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
5 Party shall bear its own costs and attorney's fees in connection with this action.

6 14.3 Nothing in this Section 14 shall preclude a Party from seeking an award of
7 sanctions pursuant to law.

8 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

9 This Consent To Judgment may be executed in counterparts and by facsimile or portable
10 document format (PDF), each of which shall be deemed an original, and all of which, when taken
11 together, shall constitute one and the same document.

12 **16. AUTHORIZATION**

13 The undersigned parties and their counsel are authorized to execute this Consent To
14 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
15 terms and conditions of this Consent To Judgment.

16 **IT IS SO AGREED**

17 Dated: July __, 2012 18 19 _____ 20 Plaintiff Anthony E. Held 21	Dated: July __, 2012 22 23 _____ 24 Richard Ross, President 25 Ross Acquisition Co. 26 27 28
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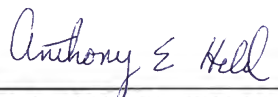
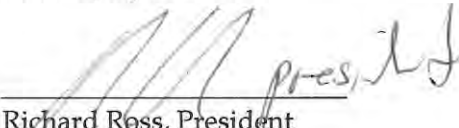
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16 **IT IS SO AGREED**

17 Dated: July <u>31</u> , 2012 18  19 _____ 20 Plaintiff Anthony E. Held 21	Dated: July <u>23</u> , 2012  Richard Ross, President Ross Acquisition Co. 22 23 24 25 26 27 28
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