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Clifford A. Chanler, State Bar No. 135534
David S. Lavine, State Bar No. 166744
CHANLER LAW GROUP
2560 Ninth Street
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Telephone: (510) 848-8880
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Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

(ENDORSED)
FILED

FEB 24 2010

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY M. Jansson DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
NANCY SALES COMPANY, INC., *et al.*,
Defendants.

Case No. 109CV152731

~~[PROPOSED]~~ JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT

Date: February 23, 2010

Time: 9:00 A.M.

Dept.: ~~19~~ 9

Judge: Hon. James Emerson Mark H. Pierce

BY FAX

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant
2 NANCY SALES COMPANY, INC., having agreed through their respective counsel that
3 judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the
4 form of a Stipulation and [Proposed] Order Re: Consent Judgment ("Consent Judgment")
5 entered into by the parties, and following issuance of an order approving this Proposition 65
6 settlement agreement and entering the Consent Judgment on February 23, 2010.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of
8 Civil Procedure §664.6, judgment is entered in accordance with the terms of the Consent
9 Judgment attached hereto as **Exhibit 1**.

10
11 **IT IS SO ORDERED.**

Hon. Mark H. Pierce

12
13 Dated: FEB 24 2010

14 JUDGE OF THE SUPERIOR COURT

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Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 David Lavine, State Bar No. 166744
3 CHANLER LAW GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 NANCY SALES CO., INC., and DOES
18 1-150, inclusive,

19 Defendant.

Case No. 109CV152731

**STIPULATION AND [PROPOSED] ORDER
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

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STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Nancy Sales Co., Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Held"), and Nancy Sales Co., Inc. ("Nancy Sales Co."), with Held and Nancy Sales
5 Co. together referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Nancy Sales Co. employs ten or more persons and is a person in the course of doing
12 business for purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Nancy Sales Co. has manufactured, distributed, and/or sold in the State
15 of California children's vinyl plush toys and vinyl keychains containing di(2-ethylhexyl)phthalate
16 ("DEHP"). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
17 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical
18 known to the State of California to cause birth defects and other reproductive harm. DEHP is
19 referred to herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as (1) children's
22 plush toys containing the Listed Chemical including, but not limited to, (a) *Bob the Builder*
23 *Plush*, (b) *Nickelodeon SpongeBob Squarepants Plush*, (c) *It's A Knock Out Boxing Glove*,
24 #00055712 (#7 47482 34720 8); and (2) vinyl keychains containing the Listed Chemical
25 including, but not limited to, *Butterfly Light Up Keychain*, #00064668 (#7 4782 35876 1). All
26 such products containing the Listed Chemical are referred to hereinafter as the "Products."

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1.6 Notice of Violation

On November 7, 2008 and April 30, 2009, Held served Nancy Sales Co. and various public enforcement agencies with a "60-Day Notice of Violation" (the "Notices") that provided Nancy Sales Co. with notice of alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the Products that Nancy Sales Co. sold exposed users in California to the Listed Chemical.

1.7 Complaint

On September 18, 2009, Dr. Held, who was and is acting in the interest of the general public in California, filed a complaint in the Santa Clara County Superior Court naming Nancy Sales Co. as a defendant and alleging violations of Health & Safety Code §25249.6 by Nancy Sales Co. based on the alleged exposures to the Listed Chemical contained in the Products manufactured, distributed and/or offered for sale in California by Nancy Sales Co. ("Complaint").

1.8 No Admission

Nancy Sales Co. denies the material factual and legal allegations contained in Held's Notices and maintains that all products that it has sold and distributed 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 by Nancy Sales Co. of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Nancy Sales Co. of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Nancy Sales Co.. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Nancy Sales Co. under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over Nancy Sales Co. as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean January 15, 2010.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

Commencing on the Effective Date, Nancy Sales Co. shall not sell, ship, or offer to be shipped for sale in California any Product unless such Product is sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) or (b), is otherwise exempt pursuant to Section 2.2, or complies with the reformulation standards set forth in Section 2.3.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

(a) Retail Store Sales.

(i) Product Labeling. Nancy Sales Co. may affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Nancy Sales Co. or its agents, that states:

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

(ii) Point-of-Sale Warnings. Alternatively, Nancy Sales Co. may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:¹

WARNING: These products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

[list products for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that Nancy Sales Co. sells Products via mail order catalog or the internet to customers located in California after the Effective Date that are not Reformulated Products, Nancy Sales Co. shall provide a warning for Products sold via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page, and either in the same location as the display and/or description of the Product or in a footnote identifying the warning:

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

¹For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 In the alternative, Nancy Sales Co. may utilize a designated symbol to cross reference the
2 applicable warning and shall define the term "designated symbol" with the following language on
3 the inside of the front cover of the catalog or on the same page as any order form for the
4 Product(s):

5 **WARNING:** Certain products identified with this symbol
6 ▼ and offered for sale in this catalog
7 contain DEHP, a phthalate chemical known
8 to the State of California to cause birth
9 defects and other reproductive harm.

8 The designated symbol must appear on the same page and in close proximity to the
9 display and/or description of the Product. On each page where the designated symbol appears,
10 Nancy Sales Co. must provide language directing the consumer to the warning language and
11 definition of the designated symbol.

12 If Nancy Sales Co. elects to provide warnings in the mail order catalog, then the warnings
13 must be included in all catalogs offering to sell one or more Products printed after the Effective
14 Date.

15 (ii) **Internet Website Warning.** A warning may be given in
16 conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the
17 same web page on which the Product is displayed; (b) on the same web page as the order form for
18 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
19 displayed to a purchaser during the checkout process. The following warning statement shall be
20 used and shall appear in any of the above instances adjacent to or immediately following the
21 display, description, or price of the Product for which it is given in the same type size or larger
22 than the Product description text:

23 **WARNING:** This product contains DEHP, a phthalate
24 chemical known to the State of California to
25 cause birth defects and other reproductive
26 harm.

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

1 **WARNING:** Products identified on this page with the
2 following symbol contain DEHP, a
3 phthalate chemical known to the State of
4 California to cause birth defects and other
5 reproductive harm: ▼.

6 **2.2 Exceptions To Warning Requirements**

7 The warning requirements set forth in Section 2.1 shall not apply to:

- 8 (i) Any Product manufactured by Nancy Sales Co. prior to the Effective Date;
9 or
10 (ii) Reformulated Products (as defined in Section 2.3 below).

11 **2.3 Reformulation Standards**

12 Reformulated Products are defined as those Products containing less than or equal to
13 1,000 parts per million ("ppm") of the Listed Chemical. The warnings required pursuant to
14 Section 2.1 above shall not be required for Reformulated Products.

15 **2.4 Reformulation Commitment**

16 Nancy Sales Co. hereby commits that one hundred percent (100%) of the Products that it
17 sells in California after the Effective Date shall qualify as Reformulated Products.

18 **3. MONETARY PAYMENTS**

19 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

20 3.1.1 In settlement of all claims related to the Products and Listed Chemical
21 referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code
22 Section 25249.7(b), Nancy Sales Co. shall pay \$10,000.00 in civil penalties.

23 3.1.2 Civil penalties are to be apportioned in accordance with California Health
24 & Safety Code Section 25192, with 75% of these funds remitted to the State of California's
25 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
26 penalty remitted to Anthony Held as provided by California Health & Safety Code Section
27 25249.12(d). Nancy Sales Co. shall issue two separate checks for the penalty payment: (a) one
28 check made payable to "Chanler Law Group in Trust for OEHHA" in the amount of \$7500.00,
representing 75% of the total penalty; and (b) one check to "Chanler Law Group in Trust for

1 Anthony Held" in the amount of \$2500.00 representing 25% of the total penalty. Two separate
2 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA
3 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five
4 calendar days before the payment is due.

5 3.1.3 Payment Timing. Not later than five (5) days following the Effective Date,
6 the penalty payment shall be made by Nancy Sales Co. to Hunton & Williams LLP, to be held in
7 a client Trust Account. Hunton & Williams LLP shall provide Plaintiff with written notice that it
8 has received the penalty payment from Nancy Sales Co. Such penalty payment shall remain in
9 the Trust Account until this Consent Judgment has been approved by the Court at the approval
10 hearing and notice of approval has been provided to Nancy Sales Co. by Plaintiff. Payment shall
11 be delivered to the following address within five days of such approval and notification:

12 Chanler Law Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

15 4. **REIMBURSEMENT OF FEES AND COSTS**

16 4.1 **Attorney Fees and Costs.**

17 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
19 this fee issue to be resolved after the material terms of the agreement had been settled. Nancy
20 Sales Co. then expressed a desire to resolve the fee and cost issue shortly after the other
21 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
22 the compensation due to Dr. Held and his counsel under general contract principles and the
23 private attorney general doctrine codified at California Code of Civil Procedure (C.C.P.)
24 Section 1021.5. Nancy Sales Co. shall reimburse Dr. Held and his counsel a total of \$33,500.00
25 for fees and costs incurred as a result of investigating, bringing this matter to Nancy Sales Co.'s
26 attention, and litigating and negotiating a settlement in the public interest. Not later than five (5)
27 days following the execution of this Consent Judgment by both parties, the fee and cost payment
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1 shall be made by Nancy Sales Co. to Hunton & Williams LLP, to be held in a client Trust
2 Account. Such fee and cost payment shall remain in the Trust Account until this Consent
3 Judgment has been entered by the Court.

4 Hunton & Williams LLP shall provide Plaintiff with written notice that it has
5 received the penalty payment from Nancy Sales Co. Such fee and cost payment shall remain in
6 the Trust Account until this Consent Judgment has been approved by the Court at the approval
7 hearing and notice of approval has been provided to Nancy Sales Co. by Plaintiff. Payment shall
8 be delivered to the following address within five days of such approval and notification:

9 Chanler Law Group
10 Attn: Proposition 65 Controller
2560 Ninth Street
11 Parker Plaza, Suite 214
Berkeley, CA 94710

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Release of Nancy Sales Co. and Downstream Customers**

14 In further consideration of the promises and agreements herein contained, and for the
15 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
16 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
17 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
18 form of legal action and releases all claims, including, without limitation, all actions, and causes
19 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
20 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
21 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
22 (collectively "Claims"), that were brought or could have been brought against Nancy Sales Co. or
23 its affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
24 shareholders, agents, employees, and sister and parent entities and each of Nancy Sales Co.'s
25 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
26 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
27 and their respective officers, directors, attorneys, representatives, shareholders, agents, employees

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Page 8

1 and sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any
2 other statutory or common law Claims that could have been asserted including such Claims as
3 they relate to Nancy Sales Co. and each of its Releasees' alleged failure to warn about exposures
4 to or identification of the Listed Chemical contained in the Products.

5 **5.2 Nancy Sales Co.'s Release of Held**

6 Nancy Sales Co. waives any and all claims against Held, his attorneys and other
7 representatives, for any and all actions taken or statements made (or those that could have been
8 taken or made) by Held and his attorneys and other representatives, whether in the course of
9 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
10 and/or with respect to the Products.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one
14 year after it has been fully executed by all parties, in which event any monies that have been
15 provided to Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded
16 within fifteen (15) days after receiving written notice from Nancy Sales Co. that the one-year
17 period has expired.

18 **7. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
21 provisions remaining shall not be adversely affected.

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed or
25 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the
26 Products, then Nancy Sales Co. shall provide written notice to Held of any asserted change in the
27 law, and shall have no further obligations pursuant to this consent judgment with respect to, and
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1 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
2 interpreted to relieve Nancy Sales Co. from any obligation to comply with any pertinent state or
3 federal toxics control laws.

4 **9. NOTICES**

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

9 To Nancy Sales Co.:

10 Stephen B. Lipkin, President
11 Nancy Sales Co., Inc.
12 22 Willow Street
13 Chelsea, MA 02150

14 With copies to:

15 Malcom Weiss
16 Catherine Allen
17 Hunton & Williams LLP
18 550 South Hope Street, Suite 2000
19 Los Angeles, CA 90071

20 To Held:

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

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

28 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

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

1 11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**
2 Held agrees to comply with the reporting form requirements referenced in California
3 Health & Safety Code Section 25249.7(f).

4 12. **ADDITIONAL POST EXECUTION ACTIVITIES**
5 The parties acknowledge that pursuant to Health & Safety Code Section 25249.7, a
6 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
7 obtaining such approval, Held, Nancy Sales Co. and their respective counsel agree to mutually
8 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
9 Judgment by the Court in a timely manner.

10 13. **MODIFICATION**
11 This Consent Judgment may be modified only: (1) by written agreement of the parties
12 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful
13 motion of any party and entry of a modified consent judgment by the Court.

14 14. **AUTHORIZATION**
15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective parties and have read, understood, and agree to all of the terms and conditions of this
17 Consent Judgment.

18 **AGREED TO:** **APPROVED**
19 By Anthony Held at 12:14 pm, Dec 16, 2009
20 Date: _____

AGREED TO:
Date: 12/16/09

21 By: Anthony E. Held
22 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: Stephen Lipkin
Stephen Lipkin, President
Defendant, NANCY SALES CO., INC.

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