

ENDORSED  
FILED  
San Francisco County Superior Court

FEB 18 2010

GORDON PARK-LI, Clerk  
BY MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

REC'D FEB 02 2010

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5 Attorneys for Plaintiff  
6 ANTHONY E. HELD, Ph.D., P.E.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SAN FRANCISCO  
9 UNLIMITED CIVIL JURISDICTION

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

12 Plaintiff,

13 v.

14 FIELDSTON CLOTHES, INC., AND  
15 S. ROTHSCHILD & CO., INC., ET AL.,

16 Defendants.

Case No. CGC-09-487819

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

Date: January 29, 2010

Time: 9:30 a.m.

Dept.: 301

Judge: Hon. Peter Busch

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[PROPOSED] JUDGMENT

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E., and Defendants  
2 FIELDSTON CLOTHES, INC. and S. ROTHSCHILD & CO., INC., having agreed through their  
3 respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement  
4 agreement in the form of a Stipulation and [Proposed] Order Re: Consent Judgment (“Consent  
5 Judgment”) entered into by the parties, and following issuance of an order approving this  
6 Proposition 65 settlement agreement and entry of the Consent Judgment on January 29, 2010,

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

10 **IT IS SO ORDERED.**

11  
12 Dated: FEB 18 2010

**PETER J. BUSCH**  
JUDGE OF THE SUPERIOR COURT

**PETER J. BUSCH**

# **Exhibit 1**

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Attorneys for Plaintiff  
Anthony E. Held, Ph.D., P.E.

Kurt Weissmuller, State Bar No. 117187  
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Attorneys for Defendants  
Fieldston Clothes, Inc. and S. Rothschild & Co., Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

FIELDSTON CLOTHES, INC., AND  
S. ROTHSCHILD & CO., ET AL.,

Defendants.

Case No. CGC-09-487819

STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT

1       **1.     INTRODUCTION**

2               **1.1     Anthony E. Held, Ph.D., P.E., Fieldston Clothes, Inc., S. Rothschild & Co., Inc.**

3               This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4               P.E. (“Dr. Held” or “Plaintiff”), Fieldston Clothes, Inc., and S. Rothschild & Co., Inc.  
5               (“Defendants”), with Plaintiff and Defendants collectively referred to as the “Parties.”

6               **1.2     Plaintiff**

7               Dr. 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     Fieldston Clothes, Inc. and S. Rothschild & Co., Inc.**

11              Plaintiff alleges that Defendants employ ten or more persons who are each a person in the  
12              course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of  
13              1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14              **1.4     General Allegations**

15              Dr. Held alleges that Defendants have manufactured, distributed and/or sold vinyl zipper  
16              pulls on children’s apparel items which contain phthalates, including di(2-ethylhexyl)phthalate  
17              (hereinafter the “Listed Chemical”), without the requisite Proposition 65 warnings. The Listed  
18              Chemical is on the Proposition 65 list as known to cause cancer as well as birth defects and other  
19              reproductive harm.

20              **1.5     Product Description**

21              The products that are covered by this Consent Judgment are defined as follows: vinyl zipper  
22              pulls on children’s apparel items containing the Listed Chemical such as, but not limited to, *BZ*  
23              *Yellow Jacket, Style: 28373 (#7 26112 20699 3)*. All such vinyl zipper pulls containing the Listed  
24              Chemical are referred to hereinafter as the “Products”.

25              **1.6     Notice of Violation**

26              On January 26, 2009, Dr. Held served Defendants and various public enforcement agencies  
27              with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Defendants and  
28

1 public enforcers with notice of alleged violations of California Health & Safety Code § 25249.6 for  
2 failing to warn consumers that the Products that Defendants sold exposed users in California to the  
3 Listed Chemical. To the best of the parties' knowledge, no public enforcer has prosecuted the  
4 allegations set forth in the Notice.

5 **1.7 Complaint**

6 On April 27, 2009, Dr. Held, acting in the interest of the general public in California, filed a  
7 complaint ("Complaint" or "Action") in the Superior Court in and for the City and County of San  
8 Francisco against Fieldston Clothes, Inc., S. Rothschild & Co., Inc. and Does 1 through 150,  
9 alleging violations of California Health & Safety Code § 25249.6 based on the alleged exposures to  
10 the Listed Chemical contained in the Products sold by Defendants.

11 **1.8 Answer**

12 On June 11, 2009, Defendants responded to the Complaint by filing a general denial and  
13 affirmative defenses, denying all claims alleged by Plaintiff.

14 **1.9 No Admission**

15 Defendants deny the material, factual and legal allegations contained in Dr. Held's Notice  
16 and Complaint and maintain that all products that they have sold, manufactured and/or distributed in  
17 California, including the Products, have been and are in compliance with all laws. Nothing in this  
18 Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of  
19 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed  
20 as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law,  
21 such being specifically denied by Defendants. However, this section shall not diminish or otherwise  
22 affect Defendants' obligations, responsibilities, and duties under this Consent Judgment.

23 **1.10 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in  
26 the County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions  
27 of this Consent Judgment.

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**1.11 Purpose of Consent Judgment**

In order to avoid continued and protracted litigation, the Parties wish to resolve completely and finally the issues raised by the Notice and the Complaint pursuant to the terms and conditions described herein. By entering into this Consent Judgment, the Parties recognize that this Consent Judgment is a full and final settlement of all claims related to the Products and the Listed Chemical that were raised or could have been raised in the Complaint. The Parties also intend for this Consent Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or collateral estoppel protection for Defendants, against any and all other claims based upon the same or similar allegations to the Products and the Listed Chemical.

**1.12 Effective Date**

For purposes of this Consent Judgment, the term "Effective Date" shall mean November 6, 2009.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing less than or equal to 1,000 parts per million ("ppm" or "mg/kg") of the Listed Chemical.

**2.2 Reformulation Commitment**

Defendants hereby commit that one hundred percent (100%) of the Products that they manufacture, sell or ship after the Effective Date for sale in California, shall qualify as Reformulated Products.

**3. MONETARY PAYMENTS**

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

In settlement of all the claims referred to in this Consent Judgment, Defendants shall collectively pay \$4,000 in civil penalties to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code § 25249.12(d).

1 Defendants shall issue two separate checks for the penalty payment: (a) one check made payable to  
2 "Chanler Law Group in Trust For OEHHA" in the amount of \$3,000, representing 75% of the total  
3 penalty; and (b) one check to "Chanler Law Group in Trust for Anthony Held" in the amount of  
4 \$1,000, representing 25% of the total penalty.

5 Within five (5) business days after the execution of this Consent Judgment by both parties,  
6 the penalty payment shall be made by Defendants to Alston & Bird, LLP, to be held in a client Trust  
7 Account. Such penalty payment shall remain in the Trust Account until this Consent Judgment has  
8 been entered by the Court. The penalty payment held by Alston & Bird, LLP shall be delivered to  
9 the following address within two (2) business days of entry of this Consent Judgment:

10 Chanler Law Group  
11 Attn: Proposition 65 Coordinator  
12 2560 Ninth Street, Suite 214  
13 Berkeley, CA 94710

14 Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,  
15 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be  
16 provided within two (2) calendar days of payment delivery.

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

18 **4.1 Attorney's Fees and Costs**

19 The Parties reached an accord on the compensation due to Dr. Held and his counsel under  
20 general contract principles and the private attorney general doctrine codified at California Code of  
21 Civil Procedure (CCP) § 1021.5. Defendants shall reimburse Dr. Held and his counsel \$34,200 for  
22 fees and costs incurred as a result of investigating, bringing this matter to their attention, and  
23 negotiating a settlement in the public interest. This figure includes Dr. Held's future fees and costs  
24 including attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as  
25 well as any other legal work performed after the execution of this Consent Judgment incurred in an  
26 effort to obtain finality of the case.

27 Within five (5) business days following the execution of this Consent Judgment by both  
28 parties, the payment for reimbursement of fees and costs shall be made by Defendants to Alston &

1 Bird, LLP, to be held in a client Trust Account. Such fees and costs payment shall remain in the  
2 Trust Account until this Consent Judgment has been entered by the Court. The payment for  
3 reimbursement of plaintiff's fees and costs held by Alston & Bird LLP shall be made payable to  
4 "Chanler Law Group" and delivered to the following address within two (2) business days of entry  
5 of this Consent Judgment by the Court:

6 Chanler Law Group  
7 Attn: Proposition 65 Coordinator  
8 2560 Ninth Street, Suite 214  
9 Berkeley, CA 94710

10 A separate 1099 shall be issued to "Chanler Law Group" (EIN: 94-3171522) for the amount  
11 of the reimbursement of Plaintiff's fees and costs.

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Dr. Held's Release of Defendants**

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, Dr. Held on behalf of himself, his past  
16 and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
17 general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute  
18 or participate in, directly or indirectly, any form of legal action and releases all claims, including,  
19 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
20 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or  
21 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any  
22 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against  
23 Defendants and each of their wholesalers, licensors, licensees, auctioneers, retailers, distributors,  
24 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
25 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,  
26 and employees, and sister and parent entities, (collectively "Releasees") that arise under Proposition  
27 65, as such claims relate to Defendants' alleged failure to warn about exposures to the Listed  
28 Chemical contained in the Products.

1 Dr. Held in his individual capacity on behalf of himself, his past and current agents,  
2 representatives, attorneys, and successors and/or assigns, and *not* his representative capacity, hereby  
3 waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
4 releases all claims which he now has or may have in the future against Defendants, irrespective of  
5 the subject matter, of all character, kind and nature, whether said claims are known or unknown or  
6 are suspected or unsuspected and Dr. Held expressly waives any and all rights and benefits which he  
7 now has, or in the future may have, under California Civil Code § 1542, which provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
11 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
12 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
13 WITH THE DEBTOR.

14 It is expressly agreed and understood that the general release by Dr. Held of Defendants is a  
15 determinative consideration of Defendants' willingness and decision to enter into this Consent  
16 Judgment.

17 **5.2 Defendants' Release of Dr. Held**

18 Defendants, on behalf of themselves and their Releasees, waive any and all claims against  
19 Dr. Held, his attorneys, and other representatives for any and all actions taken by Dr. Held and his  
20 attorneys and other representatives, whether in the course of investigating claims or otherwise  
21 seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the  
22 Products.

23 **6. COURT APPROVAL**

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

27 **7. SEVERABILITY**

28 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions

1 remaining shall not be adversely affected.

2 **8. GOVERNING LAW**

3 The terms of this Consent Judgment shall be governed by the laws of the State of California  
4 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or  
5 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this  
6 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or  
7 preemption or rendered inapplicable by reason of law generally as to the Products, then Defendants  
8 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
9 extent that, the Products are so affected.

10 **9. NOTICES**

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

15 To Defendants:

16 Mark Friedman, President  
17 Fieldston Clothes, Inc. and/or S. Rothschild & Co., Inc.  
18 500 Fashion Avenue, Floor 6  
19 New York, NY 10018

20 With a copy to:

21 Kurt Weissmuller, Esq.  
22 Alston + Bird, LLP  
23 333 S. Hope St. 16th Fl.  
24 Los Angeles, CA 90071

25 To Dr. Held:

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

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent. Should Dr. Held become aware of any

1 coats or other products containing vinyl zipper pulls manufactured, distributed or sold by  
2 Defendants in California that Dr. Held believes violates Section 2 of this Consent Judgment, Dr.  
3 Held agrees to provide Defendants with written notice which identifies the products at issue by  
4 model and style number and shall include relevant test data showing the presence of DEHP or any  
5 other Proposition 65 listed chemical.

6 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

7 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,  
8 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
9 one and the same document. A facsimile or .pdf signature shall be as valid as the original.

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

11 Dr. Held and his attorneys agree to comply with the reporting form requirements referenced  
12 in California Health & Safety Code § 25249.7(f).

13 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

14 Dr. Held and Defendants agree to mutually employ their and their counsel's best efforts to  
15 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
16 Judgment by the Court in a timely manner and defend any appellate review of the Court's approval.  
17 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed  
18 motion is required to obtain judicial approval of this Consent Judgment which Dr. Held shall draft  
19 and file, and Defendants shall join. If any third party objection to the noticed motion is filed, Dr.  
20 Held and Defendants shall work together to file a joint reply and appear at any hearing before the  
21 Court. This provision is a material component of the Consent Judgment and shall be treated as such  
22 in the event of a breach.

23 **13. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
25 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
26 any party and entry of a modified consent judgment by the Court.

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**14. AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 12/1/09

By: \_\_\_\_\_  
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: [Signature]  
Mark Friedman, President  
Defendant, Fieldston Clothes, Inc.

Date: 12/1/04

By: [Signature]  
Mark Friedman, President  
Defendant, S. Rothschild & Co., Inc.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**14. AUTHORIZATION**

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

AGREED TO:

AGREED TO:

APPROVED  
By Anthony Held at 4:57 pm, Nov 05, 2008

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: Anthony E. Held  
Plaintiff, Anthony E. Held, Ph.D., P.E.

By: \_\_\_\_\_  
Mark Friedman, President  
Defendant, Fieldston Clothes, Inc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Friedman, President  
Defendant, S. Rothschild & Co., Inc.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT