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SACRAMENTO COURTS  
DEPT. #54

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

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

13 Plaintiff,

14 v.

15 BEVERLY FABRICS, INC., *et al.*,

16 Defendants.  
17  
18  
19

Case No. 34-2009-00066433

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

Date: August 20, 2010  
Time: 9:00 a.m.  
Dept: 54  
Judge: Hon. Shelley Anne Chang

Action filed: December 11, 2009



# **Exhibit 1**

1 Clifford A. Chanler, State Bar No. 135534  
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6 ANTHONY E. HELD, Ph.D., P.E.

7  
8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 THE COUNTY OF SACRAMENTO  
11 UNLIMITED CIVIL JURISDICTION  
12

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

14 Plaintiff,

15 v.

16 BEVERLY FABRICS, INC., and DOES 1-150,  
inclusive,

17 Defendants.  
18

Case No. 34-2009-00066433

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1       **1. INTRODUCTION**

2               **1.1 Anthony E. Held, Ph.D., P.E., and Beverly Fabrics, Inc.**

3               This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter "Dr. Held") and Beverly Fabrics, Inc. (hereinafter "Beverly Fabrics"), with Dr. Held and  
5 Beverly Fabrics collectively referred to as the "Parties."

6               **1.2 Plaintiff**

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

14              **1.4 General Allegations**

15              Dr. Held alleges that Beverly Fabrics has sold in the State of California clear plastic vinyl  
16 containing di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to the Safe Drinking Water  
17 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*  
18 ("Proposition 65"), as a chemical known to the State of California to cause birth defects and other  
19 reproductive harm. DEHP is 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 follows: clear plastic  
22 vinyl containing excessive levels of the Listed Chemical including, but not limited to, *Clear Vinyl*  
23 *Gauge*. All such items shall be referred to herein as the "Products."

24              **1.6 Notice of Violation**

25              On May 22, 2009, Dr. Held served Beverly Fabrics and various public enforcement agencies  
26 with a document entitled "60-Day Notice of Violation" that provided Beverly Fabrics and such public  
27 enforcers with notice that alleged that Beverly Fabrics was in violation of California Health & Safety  
28

1 Code § 25249.6 for failing to warn consumers and customers that the Products exposed users in  
2 California to DEHP.

3 **1.7 Complaint**

4 On December 11, 2009, Dr. Held, who was and is acting in the interest of the general public  
5 in California, filed a complaint in the Sacramento Superior Court, Case No. 34-2009-00066433  
6 (“Complaint”), naming Beverly Fabrics as a defendant and alleging violations of Health & Safety  
7 Code § 25249.6 by Beverly Fabrics based on the alleged exposures to DEHP contained in the  
8 Products offered for sale in California by Beverly Fabrics.

9 **1.8 No Admission**

10 Beverly Fabrics denies the material, factual, and legal allegations contained in Dr. Held’s  
11 Notice and maintains that all products that it has sold in California, including the Products, have  
12 been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as  
13 an admission by Beverly Fabrics of any fact, finding, issue of law, or violation of law; nor shall  
14 compliance with this Consent Judgment constitute or be construed as an admission by Beverly  
15 Fabrics of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
16 denied by Beverly Fabrics. However, this section shall not diminish or otherwise affect the  
17 obligations, responsibilities and duties of Beverly Fabrics under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
20 jurisdiction over Beverly Fabrics as to the allegations contained in the Complaint, that venue is  
21 proper in the City and County of San Francisco, and that this Court has jurisdiction to enter and  
22 enforce the provisions of this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 15, 2010.  
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1 must be used:<sup>1</sup>

2                   **WARNING:** The following products contain DEHP, a  
3                   phthalate chemical known to the State of  
4                   California to cause birth defects and other  
5                   reproductive harm:

6                   *[list products for which warning is required]*

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

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

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

20                  Where it is impracticable to provide the warning on the same page and in the same location as  
21                  the display and/or description of the Product, Beverly Fabrics may utilize a designated symbol to  
22                  cross reference the applicable warning and shall define the term "designated symbol" with the  
23                  following language on the inside of the front cover of the catalog or on the same page as any order  
24                  form for the Product(s):

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

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

4                   The designated symbol must appear on the same page and in close proximity to the display  
5 and/or description of the Product. On each page where the designated symbol appears, Beverly  
6 Fabrics must provide a header or footer directing the consumer to the warning language and  
7 definition of the designated symbol.

8                   If Beverly Fabrics elects to provide warnings in the mail order catalog, then the warnings  
9 must be included in all catalogs offering to sell one or more Products printed after the Effective Date.

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

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

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

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

1                   **2.2 Exceptions To Warning Requirements**

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

- 3                   (i)     Any Product sold by Beverly Fabrics prior to the Effective Date; or  
4                   (ii)    Reformulated Products (as defined in Section 2.3 below).

5                   **2.3 Reformulation Standards**

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

9                   **3. MONETARY PAYMENTS**

10                  **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

11                  In settlement of all claims related to the Products and Listed Chemical referred to in the  
12 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Beverly  
13 Fabrics shall pay \$12,000 in civil penalties.

14                  Civil penalties are to be apportioned in accordance with California Health & Safety Code  
15 § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental  
16 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony  
17 Held as provided by California Health & Safety Code § 25249.12(d). Beverly Fabrics shall issue two  
18 separate checks for the penalty payment: (a) one check made payable to “Chanler Law Group in  
19 Trust for OEHHA” in the amount of \$9,000, representing 75% of the total penalty; and (b) one check  
20 to “Chanler Law Group in Trust for Anthony Held” in the amount of \$3,000, representing 25% of the  
21 total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box  
22 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be  
23 provided five calendar days before the payment is due.

1 Payment shall be delivered to Dr. Held's counsel on or before the Effective Date, at the  
2 following address:

3 Chanler Law Group  
4 Attn: Proposition 65 Controller  
2560 Ninth Street  
5 Parker Plaza, Suite 214  
Berkeley, CA 94710

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

7 **4.1 Attorney Fees and Costs.**

8 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
10 issue to be resolved after the material terms of the agreement had been settled. Beverly Fabrics then  
11 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
12 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.  
13 Held and his counsel under general contract principles and the private attorney general doctrine  
14 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the  
15 mutual execution of this agreement. Beverly Fabrics, on behalf of itself and those in its chain of  
16 distribution, shall reimburse Dr. Held and his counsel a total of \$25,500 for fees and costs incurred as  
17 a result of investigating, bringing this matter to Beverly Fabrics's attention, and litigating and  
18 negotiating a settlement in the public interest. Beverly Fabrics shall issue a separate 1099 for fees  
19 and costs (EIN: 94-3171522) and shall make the check payable to "Chanler Law Group" and shall be  
20 delivered on or before Effective Date.

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

24 **5. RELEASE OF ALL CLAIMS**

25 **5.1 Dr. Held's Release of Beverly Fabrics**

26 In further consideration of the promises and agreements herein contained, and for the  
27 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and  
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1 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
2 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
3 legal action and releases all claims, including, without limitation, all actions, and causes of action, in  
4 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
5 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
6 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
7 Beverly Fabrics and each of its downstream distributors, wholesalers, licensors, licensees,  
8 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
9 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
10 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This  
11 release is limited to those claims that arise under Proposition 65, as such claims relate to Beverly  
12 Fabrics's alleged failure to warn about exposures to or identification of DEHP contained in the  
13 Products.

14 **5.2 Beverly Fabrics Release of Dr. Held**

15 Beverly Fabrics waives any and all claims against Dr. Held, his attorneys and other  
16 representatives, for any and all actions taken or statements made (or those that could have been taken  
17 or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
19 and/or with respect to the Products.

20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
22 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
23 has been fully executed by all parties, in which event any monies that have been provided to Dr.  
24 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen  
25 (15) days after receiving written notice from Beverly Fabrics that the one-year period has expired.  
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1       **7. SEVERABILITY**

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

5       **8. GOVERNING LAW**

6           The terms of this Consent Judgment shall be governed by the laws of the State of California  
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is  
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Beverly  
9 Fabrics provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Beverly Fabrics from  
12 any obligation to comply with any pertinent state or federal toxics control laws.

13       **9. NOTICES**

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

18       For Beverly Fabrics:

19           Peg Carew Toledo  
20           MENNEMEIER, GLASSMAN & STROUD LLP  
21           980 9th Street, Suite 1700  
22           Sacramento, CA 95814

23       For Dr. Held:

24           Proposition 65 Coordinator  
25           CHANLER LAW GROUP  
26           2560 Ninth Street  
27           Parker Plaza, Suite 214  
28           Berkeley, CA 94710

          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.

1       **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

6               Dr. Held agrees to comply with the reporting form requirements referenced in California  
7 Health & Safety Code § 25249.7(f).

8       **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9               The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion  
10 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such  
11 approval, Dr. Held and Beverly Fabrics and their respective counsel agree to mutually employ their  
12 best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the  
13 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
14 include, at a minimum, cooperating on the drafting and filing any papers in support of the required  
15 motion for judicial approval.

16       **13. MODIFICATION**

17               This Consent Judgment may be modified only: (1) by written agreement of the parties and  
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
19 any party and entry of a modified consent judgment by the Court.  
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1 **14. AUTHORIZATION**

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

4  
5 **AGREED TO** **APPROVED**  
6 Date: By Tony Held at 11:09 am, Apr 14, 2010

**AGREED TO:**  
Date: 4 13 2010

7 By: Anthony E Held  
8 ANTHONY E HELD, Ph.D., P.E.

By: Donald Sleeper  
Donald Sleeper, President  
BEVERLY FABRICS, INC.

9  
10 **IT IS SO ORDERED.**

11  
12 Date: \_\_\_\_\_

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

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