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

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 13 2011

CLERK OF THE SUPERIOR COURT
By JUDY ANN WARREN Deputy

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

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

Plaintiff,

v.

KLUTZ; SCHOLASTIC CORPORATION;
BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION; and
DOES 1-150, inclusive

Defendants.

Case No. RG10551258

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT**

Date: April 22, 2011

Time: 1:20 p.m.

Dept.: 510

Judge: Hon. Evelio Grillo

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE CITY AND COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 KLUTZ; SCHOLASTIC CORPORATION;
18 BURLINGTON COAT FACTORY WAREHOUSE
19 CORPORATION; and DOES 1-150, inclusive,

20 Defendants.

Case No. RG10551258

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

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

6 **1.2 Anthony E. Held, Ph.D., P.E.**

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

10 **1.3 Klutz**

11 Klutz employs ten or more persons and is a person in the course of doing business for
12 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 Held alleges that Klutz has manufactured, imported, distributed, and/or sold children’s
16 books with vinyl pouches which contain phthalates, including di(2-ethylhexyl)phthalate (“DEHP”),
17 without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to
18 cause cancer as well as birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: children’s
21 books with vinyl pouches containing DEHP including, but not limited to, *Draw the Marvel Comic*
22 *Super Heroes*, (#7 30767 40004 0). All such children’s books with vinyl pouches containing DEHP
23 are referred to hereinafter as the “Products.”

24 **1.6 Notice of Violation**

25 On February 12, 2010, Held served Klutz and various public enforcement agencies, with a
26 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
27 notice of alleged violations of California Health & Safety Code § 25249.6 for failing to warn
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1 consumers that the Products sold by Klutz, exposed users in California to DEHP. To the best of the
2 Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 14, 2010, Held filed a complaint in the Superior Court in and for the County
5 of Alameda against Klutz, Case No. RG10551258 (the "Complaint"), alleging violations of
6 California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in
7 certain children's books with vinyl pouches sold by the defendants.

8 **1.8 No Admission**

9 Klutz denies the material, factual, and legal allegations contained in Held's Notice and
10 Complaint and maintains that all products that they have sold, manufactured, imported, and/or
11 distributed in California, including the Products, have been and are in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by Klutz of any fact, finding,
13 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
14 construed as an admission by Klutz of any fact, finding, conclusion, issue of law, or violation of
15 law. However, this section shall not diminish or otherwise affect Klutz's obligations,
16 responsibilities and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Klutz as to the allegations contained in the Complaint, that venue is proper in the
20 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean January 15,
24 2011.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Commitment**

3 As of the date the Court approves this Consent Judgment, Klutz shall only manufacture or
4 cause to be manufactured the Products for sale in California that are Phthalate Free as set forth
5 below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products
6 containing less than or equal to 1,000 parts per million of the Listed Chemical, when analyzed
7 pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or any
8 approved Consumer Product Safety Commission test method used to determine the DEHP content
9 in consumer products..

10 **3. PAYMENT OF CIVIL FINES**

11 In settlement of all the claims referred to in this Consent Judgment, Klutz shall pay a total of
12 \$12,000 of civil fines in two installments. The first payment of the penalty shall be \$2,000, to be
13 apportioned in accordance with California Health & Safety Code § 25249.12(c) and (d), with 75%
14 of these funds remitted to the State of California's Office of Environmental Health Hazard
15 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony E. Held, Ph.D.,
16 P.E. Klutz shall issue two separate checks for the penalty payment: (a) one check made payable to
17 "The Chanler Group in Trust For OEHHA" in the amount of \$1,500, representing 75% of the total
18 penalty; and (b) one check to "The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E." in the
19 amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the
20 above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
21 Anthony E. Held, Ph.D., P.E., whose information shall be provided five calendar days before the
22 payment is due. Payment shall be delivered to Held's counsel on or before February 15, 2011, at the
23 following address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

1 The second of payment of \$10,000 in civil fines is due on March 30, 2011, however this amount
2 shall be waived in its entirety if Klutz certifies (in writing to Held by March 15, 2011) that it has
3 met the Phthalate Free standard by February 28, 2011. If the certification is not received, then the
4 additional civil fines shall be apportioned in the same manner outline above in this paragraph.

5 **4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

6 The Parties reached an accord on the compensation due to Held and his counsel under
7 general contract principles and the private attorney general doctrine codified at California Code of
8 Civil Procedure §1021.5. Klutz shall reimburse Held and his counsel \$17,000 for fees and costs
9 incurred as a result of investigating, bringing this matter to its attention and negotiating a settlement
10 in the public interest. In addition, Klutz shall pay \$6,000 for Held's anticipated future fees and costs
11 including attorneys' fees to be incurred in seeking judicial approval of this Consent Judgment as
12 well as any other legal work performed after the execution of this Consent Judgment incurred in an
13 effort to obtain finality of the case. A combined check for reimbursement of fees and costs for both
14 stages shall be made payable to "The Chanler Group" and shall be delivered on or before February
15 15, 2011, to the following address:

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

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

23 **5. RELEASE OF ALL CLAIMS**

24 **5.1 Held's Release of Klutz**

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Sections 3 and 4, Held, on behalf of himself, his past and current
27 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
28 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
participate in, directly or indirectly, any form of legal action and releases all claims, including,

1 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
2 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
3 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
4 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
5 Klutz and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers (including,
6 but not limited to, Burlington Coat Factory Warehouse Corporation), distributors, franchisees,
7 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
8 and its respective officers, directors, attorneys, representatives, shareholders, agents, and employees,
9 and sister and parent entities, (collectively "Releasees") that arise under Proposition 65, as such
10 claims relate to Klutz's alleged failure to warn about exposures to DEHP contained in the Products.

11 **6.2 Klutz's Release of Held**

12 Klutz, on behalf of itself and its Releasees, waive any and all claims against
13 Held, his attorneys, and other representatives for any and all actions taken by Held and his attorneys
14 and other representatives, whether in the course of investigating claims or otherwise seeking
15 enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.

16 **7. COURT APPROVAL**

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

20 **8. SEVERABILITY**

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

24 **9. GOVERNING LAW**

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

5 **10. NOTICES**

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

10 To Klutz

To Held:

11 DeWitt Durham, President
12 Klutz
13 450 Lambert Avenue
Palo Alto, CA 94306

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

14 With a copy to:

15 Jeffrey Locker, Esq.
16 Locker Greenberg & Brainin PC
17 Attorneys At Law
420 Fifth Avenue
New York NY 10018

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

20 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

24 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

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