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

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21 Attorneys for Defendant  
22 CROSS CANVAS COMPANY, INC.

23 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
24 FOR THE COUNTY OF SAN FRANCISCO  
25 UNLIMITED CIVIL JURISDICTION

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

27 Plaintiff,

28 v.

CROSS CANVAS COMPANY, INC.,

Defendant.

Case No. CGC-10-505564

~~PROPOSED~~ JUDGMENT PURSUANT TO  
TERMS OF CONSENT JUDGMENT

Date: March 28, 2011

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Loretta M. Giorgi

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 11 2011

CLERK OF THE COURT

BY: GINA GONZALES  
Deputy Clerk

1 In the above-entitled action, plaintiff ANTHONY E. HELD, Ph.D., P.E. and defendant  
2 CROSS CANVAS 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 form of  
4 a Consent Judgment entered into by the parties, and following issuance of an Order approving this  
5 Proposition 65 settlement agreement and entering the Consent Judgment.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &  
7 Safety Code § 25249.7(f)(4) and Code of Civil Procedure section 664.5, judgment is entered in  
8 accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation of  
9 the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure  
10 § 664.6.

11 **IT IS SO ORDERED.**

12  
13 Dated: \_\_\_\_\_

5/11/11

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
LORETTA M. GIORGI

# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
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9 Attorneys for Plaintiff  
10 ANTHONY E. HELD, Ph.D., P.E.

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

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

Plaintiff,

v.

CROSS CANVAS COMPANY, INC.,

Defendant.

Case No. CGC-10-505564

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E., Defendant Cross Canvas Company**

3             This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter “Dr. Held”) and Cross Canvas Company, Inc. (“Cross Canvas”). Dr. Held and Cross  
5 Canvas are 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 Cross Canvas**

11            Cross Canvas 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 & Safety  
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Dr. Held alleges that Cross Canvas has sold in the State of California children’s backpacks  
16 containing di(2-ethylhexyl)phthalate (“DEHP”). Cross Canvas denies this allegation. DEHP is listed  
17 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and  
18 other reproductive harm.

19            **1.5 Product Description**

20            The products that are covered by this Consent Judgment are defined as follows: the *Drivers*  
21 *Select Backpack, C248714900, JG24DUPONT (#7 81317 737048)* and all types and models of the  
22 backpacks in the “Drivers Select” line containing DEHP. All such items marketed or sold by Cross  
23 Canvas shall be referred to herein as the “Products.”

24            **1.6 Notice of Violation**

25            On June 3, 2010, Dr. Held served Cross Canvas and the required public enforcement agencies  
26 with a document entitled “60-Day Notice of Violation” that provided Cross Canvas and such public  
27 enforcers with notice that alleged that Cross Canvas was in violation of California Health & Safety  
28 Code § 25249.6 for failing to warn consumers and customers that the *Drivers Select Backpack,*

1 C248714900, JG24DUPONT (#7 81317 737048) and the category of “Children’s Backpacks  
2 containing [DEHP]” exposed users in California to DEHP. Cross Canvas denies these allegations  
3 and further denies that it has manufactured, distributed, or sold, for sale or distribution in California,  
4 any “children’s backpacks” during the relevant time period.

5 **1.7 Complaint**

6 On November 22, 2010, Dr. Held, who was and is acting in the interest of the general public  
7 in California, filed a Complaint in the Superior Court in and for the City and County of San Francisco  
8 naming Cross Canvas and alleging violations of Health & Safety Code § 25249.6 based on, *inter alia*,  
9 the alleged exposures to DEHP contained “children’s backpacks containing the Listed Chemical,  
10 including but not limited to, the Drivers Select Backpack” offered for sale in California by Cross  
11 Canvas (the “Complaint”).

12 **1.8 No Admission**

13 This Consent Judgment resolves claims that are denied and disputed by Cross Canvas. The  
14 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
15 between the Parties for the purpose of avoiding prolonged litigation. Cross Canvas denies the  
16 material, factual, and legal allegations contained in Dr. Held’s Notice and maintains that all products  
17 that it has sold in California, including the Products, have been, and are, in compliance with all laws.  
18 Nothing in this Consent Judgment shall be construed as an admission by Cross Canvas of any fact,  
19 finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute  
20 or be construed as an admission by Cross Canvas of any fact, finding, conclusion, issue of law, or  
21 violation of law, such being specifically denied by Cross Canvas. However, this section shall not  
22 diminish or otherwise affect the obligations, responsibilities and duties of Cross Canvas under this  
23 Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over Cross Canvas as to the allegations contained in the Complaint, that venue is proper  
27 in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
28 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 November 19, 2010.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Commitment**

After the Effective Date, Cross Canvas shall not ship, sell or offer to be shipped for sale in California any Product unless it is a "Reformulated Product". For purposes of this Consent Judgment, Reformulated Product shall mean Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to any methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

**3. MONETARY PAYMENTS**

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

In settlement of all claims related to the Products and DEHP referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Cross Canvas shall pay \$5,000 in civil penalties. These civil penalties are to be apportioned in accordance with California Health & Safety Code § 25249.12(c)1 and (d), 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. This payment shall be made in two installments, with each installment in the amount of \$2,500. For each payment installment, Cross Canvas shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$1,875, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for Anthony Held" in the amount of \$625, representing 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five calendar days before the first payment installment is due. Payment of each installment shall be delivered to Dr. Held's counsel, at the following address:

1           The Chanler Group  
2           Attn: Proposition 65 Controller  
3           2560 Ninth Street  
            Parker Plaza, Suite 214  
            Berkeley, CA 94710

4           The first payment installment shall be delivered to the address above on or before December 30,  
5           2010. The second payment installment shall be delivered to the address above on or before February  
6           15, 2011.

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

8           **4.1       Attorney Fees and Costs**

9           The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
10          reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
11          issue to be resolved after the material terms of the agreement had been settled. Cross Canvas then  
12          expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
13          finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.  
14          Held and his counsel under general contract principles and the private attorney general doctrine  
15          codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the  
16          mutual execution of this agreement. Cross Canvas, on behalf of itself and those in its chain of  
17          distribution, shall reimburse Dr. Held and his counsel a total of \$32,000 for fees and costs incurred as  
18          a result of investigating, bringing this matter to Cross Canvas' attention, litigating and negotiating a  
19          settlement in the public interest, and seeking judicial approval of this settlement in the trial court.  
20          This payment shall be made in two installments, with each payment installment in the amount of  
21          \$16,000. Cross Canvas shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall  
22          make the check for each installment payable to "The Chanler Group" to the following address.

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

26          The first installment shall be delivered to the address above on or before December 30, 2010. The  
27          second installment shall be delivered to the address above on or before February 15, 2011.



1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1     Dr. Held's Release**

3             In further consideration of the promises and agreements herein contained, and for the  
4     payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and  
5     current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
6     general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
7     legal action and releases all claims, including, without limitation, all actions, and causes of action, in  
8     law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
9     expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
10    nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
11    Cross Canvas and its parents, subsidiaries, affiliates, officers, directors, attorneys, representatives,  
12    shareholders, agents, and employees, and each of their downstream distributors, wholesalers,  
13    licensors, licensees, auctioneers, retailers, franchisors, franchisees, dealers, customers (specifically  
14    including, but not limited to, Motorsports Authentics (NC), Inc., Motorsports Authentics, LLC, and  
15    The Sports Authority, Inc.), owners, purchasers, users, parent companies, corporate affiliates,  
16    subsidiaries, any other entity or person that distributed or sold the Products supplied by Cross  
17    Canvas, and their respective officers, directors, attorneys, representatives, shareholders, agents, and  
18    employees, and sister, affiliated, and parent entities (collectively "Releasees"). The releases in this  
19    Consent Judgment are limited to those claims that arise under Proposition 65, as such claims relate to  
20    Cross Canvas' or any Releasee's alleged failure to warn about exposures to, or identification of,  
21    DEHP contained in the Products. Compliance with this Consent Judgment shall be deemed to  
22    constitute compliance with Proposition 65 for the Products with respect to DEHP.

23             Dr. Held also, on behalf of himself, his past and current agents, representatives, attorneys,  
24    successors, and/or assignees, and in his individual capacity only, provides a general release herein  
25    which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Dr. Held  
26    against Cross Canvas and Releasees of any nature, character or kind, known or unknown, suspected  
27    or unsuspected, arising under Proposition 65 or an alleged failure to provide warnings for exposures  
28

1 to any Proposition 65-listed chemical from any Products manufactured, distributed, or sold by Cross  
2 Canvas and for alleged exposures to DEHP from any products at issue in the Complaint  
3 manufactured, distributed, or sold by Cross Canvas. Dr. Held acknowledges that he is familiar with  
4 Section 1542 of the California Civil Code, which provides as follows:

5  
6 A general release does not extend to claims which the creditor does not  
7 know or suspect to exist in his favor at the time of executing the release,  
8 which if known by him must have materially affected his settlement with  
9 the debtor.

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

17 Notwithstanding the foregoing, this release shall not limit or affect Dr. Held's right to enforce  
18 the terms of the Consent Judgment. The Parties further understand and agree that this release shall  
19 not extend upstream to any entities in the chain of commerce above Cross Canvas that manufactured  
20 the Products or any component parts thereof.

#### 21 **5.2 Cross Canvas' Release of Dr. Held**

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

27 Cross Canvas also provides a general release herein which shall be effective as a full and final  
28 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney  
fees, damages, losses, claims, liabilities and demands of Cross Canvas of any nature, character or

1 kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action.

2 Cross Canvas acknowledges that it is familiar with Section 1542 of the California Civil Code, which  
3 provides as follows:

4           A general release does not extend to claims which the creditor does not  
5           know or suspect to exist in his or her favor at the time of executing the  
6           release, which if known by him or her must have materially affected his  
7           settlement with the debtor.

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

15          Notwithstanding the foregoing, this release shall not limit or affect Cross Canvas' right to  
16          enforce the terms of the Consent Judgment.

17 **6. COURT APPROVAL**

18          This Consent Judgment is not effective until it is approved and entered by the Court and shall  
19          be null and void if, for any reason, it is not approved and entered by the Court within nine months  
20          after it has been fully executed by all Parties, in which event any monies that have been provided to  
21          Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen  
22          (15) days after receiving written notice from Cross Canvas that the nine month period has expired.

23 **7. SEVERABILITY**

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

27 **8. GOVERNING LAW**

28          The terms of this Consent Judgment shall be governed by the laws of the State of California  
and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is

1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Cross Canvas  
2 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
4 so affected.

5 **9. NOTICES**

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

10 For Cross Canvas:

11 Glenn Russell, President  
12 Cross Canvas Company, Inc.  
13 63 Glendale Avenue  
Asheville, NC 28803

with a copy to:

Sarah Esmaili  
Arnold & Porter LLP  
One Embarcadero Center  
Suite 2200  
San Francisco, CA 94111

14 For Dr. Held:

15 Proposition 65 Coordinator  
16 The Chanler Group  
17 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

27

28

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion  
3 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such  
4 approval, Dr. Held and Cross Canvas and their respective counsel agree to mutually employ their best  
5 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the  
6 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
7 include, at a minimum, cooperating on the drafting and filing of any papers in support of the required  
8 motion for judicial approval. Cross Canvas shall provide a draft of the motion for approval to counsel  
9 for Dr. Held within 15 days of the fully executed Consent Judgment.

10 **13. MODIFICATION**

11 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
12 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
13 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 and have read, understood,  
16 and agree to all of the terms and conditions hereof.

18 **AGREED TO** **APPROVED**  
19 *By Tony Held at 10:11 am, Dec 10, 2010*

**AGREED TO:**  
Date: \_\_\_\_\_

20 By: *Anthony E. Held*  
21 ANTHONY E. HELD, Ph.D., P.E.

By: \_\_\_\_\_  
Glenn Russell, President  
CROSS CANVAS COMPANY, INC.

22 **IT IS SO ORDERED.**

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

24 \_\_\_\_\_  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
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6 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
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12 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
13 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 and have read, understood,  
16 and agree to all of the terms and conditions hereof.

18 **AGREED TO:**

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

20 By: \_\_\_\_\_  
21 ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**

19 Date: 12/10/2010

20 By: Glenn Russell  
21 Glenn Russell, President  
22 CROSS CANVAS COMPANY, INC.

23 **IT IS SO ORDERED.**

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

25 \_\_\_\_\_  
26 JUDGE OF THE SUPERIOR COURT