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3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

FILED

APR 27 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner Deputy



11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 ATTWOOD CORPORATION, *et al.*,

18 Defendants.

) Case No.: CIV1005294

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

) Date: April 27, 2011
) Time: 8:30 a.m.
) Dept.: B
) Judge: Hon. Roy O. Chernus

ENTERED

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendants
2 ATTWOOD CORPORATION and BRUNSWICK CORPORATION having agreed through their
3 respective counsel that a judgment be entered pursuant to the terms of the Consent Judgment entered
4 into by the parties in resolution of this Proposition 65 action, and following the issuance of an order
5 approving the Parties' settlement agreement on April 27, 2011.

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

11 **IT IS SO ORDERED.**

12
13 Dated: _____

4/27/11

14 
15 _____
16 JUDGE OF THE SUPERIOR COURT
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Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

11 Edward P. Sangster, State Bar No. 121041
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13 K&L GATES LLP
14 Four Embarcadero Center, Suite 1200
15 San Francisco, CA 94111
16 Telephone: (415) 882-8200
17 Facsimile: (415) 882-8220

18 Attorneys for Defendants
19 ATTWOOD CORPORATION and
20 BRUNSWICK CORPORATION

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF MARIN
23 UNLIMITED CIVIL JURISDICTION

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

25 Plaintiff,

26 vs.

27 ATTWOOD CORPORATION; BRUNSWICK
28 CORPORATION; KOLTOV, INC.; IMPLUS
FOOTCARE, LLC; ONYX CORPORATION;
VSI INTERNATIONAL, LLC; NEOPTX, LLC;
and DOES 1-150, inclusive,

Defendants.

) Case No. CIV-1005294

) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO ATTWOOD CORPORATION**
) **AND BRUNSWICK CORPORATION**

) Dept:
) Judge:
) Date: None set

) Complaint Filed: October 5, 2010

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., Attwood Corporation and Brunswick Corporation**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 ("Held" or "Plaintiff") on the one hand, and Attwood Corporation and Brunswick Corporation
5 (collectively "Defendants"), on the other hand, with Held and Defendants collectively referred to as
6 the "parties."

7 **1.2 Anthony E. Held, Ph.D., P.E.**

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

11 **1.3 Attwood Corporation and Brunswick Corporation**

12 Held alleges that Defendants each employ ten or more persons and are each persons in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Held alleges that Defendants have manufactured, imported, distributed and/or sold bags/cases
17 for toiletries which contain phthalates, including di(2-ethylhexyl)phthalate ("DEHP"), without the
18 requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as known to cause cancer as
19 well as birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: bags for
22 medical kits containing DEHP, including but not limited to, *Attwood Marine First Aid Kit, #11835-7*
23 (*#0 22697 11835 6*), sold by Defendants in California. All such bags containing DEHP are referred
24 to hereinafter as the "Products."

25 **1.6 Notice of Violation**

26 On July 1, 2010, Held served Attwood Corporation, Brunswick Corporation and various
27 public enforcement agencies, with a document entitled "60-Day Notice of Violation" (the "Notice")
28 that provided the recipients with notice of alleged violations of California Health & Safety Code §

1 25249.6 for failing to warn consumers that the Products sold by Defendants, exposed users in
2 California to DEHP. To the best of the parties' knowledge, no public enforcer has prosecuted the
3 allegations set forth in the Notice.

4 **1.7 Complaint**

5 On October 5, 2010, Held filed a complaint in the Superior Court in and for the County of
6 Marin against Attwood Corporation, Brunswick Corporation and Does 1 through 150, *Held v.*
7 *Attwood Corporation, et al.*, Case No. CIV-1005294 (the "Complaint"), alleging violations of
8 California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in
9 certain bags/cases for toiletries sold by Defendants.

10 **1.8 Answer**

11 On November 29, 2010, Defendants responded to the Complaint by filing a general denial and
12 affirmative defenses, denying all claims alleged by Held.

13 **1.9 No Admission**

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

22 **1.10 Consent to Jurisdiction**

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

1 **1.11 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean January 27,
3 2011.

4 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

5 **2.1 Reformulation Standards**

6 Reformulated Products are defined as those Products containing DEHP in concentrations less
7 than 0.1 percent (1,000 parts per million), in each accessible component when using a method of
8 detection and analysis authorized under 27 C.C.R. §25900.

9 **2.2 Product Warnings**

10 The parties understand and agree that the Products contain interim warnings that include the
11 following language:

12 **WARNING:** This product contains chemicals known to the
13 State of California to cause cancer and birth
 defects or other reproductive harm.

14 The parties agree and acknowledge that Defendants may use these warning labels for all
15 Products currently in the stream of commerce in the State of California. Any Product not yet
16 shipped to California from Defendants or Products that currently have no warning label affixed
17 thereto, shall contain the following language:

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

20 Each warning, whether interim or otherwise, shall be prominently placed with such
21 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
22 to be read and understood by an ordinary individual under customary conditions before purchase or
23 use. Each warning shall be provided in a manner such that the consumer or user understands to
24 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

25 For Products sold by catalog or via the internet or by telephone to consumers in California,
26 the preceding warning statement must be supplemented with written information advising the
27 consumer, in a conspicuous manner, that he or she may return the Product for a full refund (including
28

1 shipping costs for both the receipt and the return of the product) within fifteen (15) days of his or her
2 receipt of the Product.

3 **3. PAYMENT OF PENALTIES**

4 **3.1 Initial Civil Penalty**

5 In settlement of all the claims referred to in this Consent Judgment, Defendants shall pay
6 \$3,000 in initial civil penalties, to be apportioned in accordance with California Health & Safety
7 Code § 25249.12(c) and (d), with 75% of these funds remitted to the State of California's Office of
8 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
9 remitted to Anthony E. Held, Ph.D., P.E. Defendants shall issue two separate checks for the penalty
10 payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of
11 \$2,250, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for
12 Anthony E. Held, Ph.D., P.E." in the amount of \$750, representing 25% of the total penalty. Two
13 separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA,
14 95814 (EIN: 68-0284486); and (b) Anthony E. Held, Ph.D., P.E., whose information shall be
15 provided five calendar days before the payment is due.

16 Payment shall be delivered to Held's counsel on or before February 9, 2011, at the following
17 address:

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

23 **3.2 Final Civil Penalty**

24 Defendants shall pay a final civil penalty of \$22,000 on January 9, 2012. As incentive to
25 reformulate the Products, however, the final civil penalty shall be waived in its entirety if an Officer
26 of the Defendants certifies in writing that they, as of January 1, 2012, will stop shipping Products to
27 California, or are only selling, shipping and offering for sale in California only Reformulated
28 Products. Such certification must be received by The Chanler Group on or before January 1, 2012
The final civil penalty payment shall be apportioned in accordance with California Health & Safety
Code § 25249.12(c) and (d), with 75% of these funds remitted to the State of California's Office of

1 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
2 remitted to Anthony E. Held, Ph.D., P.E. Defendants shall issue two separate checks for the final civil
3 penalty payment: (a) one check made payable to “The Chanler Group in Trust For OEHHA” in the
4 amount of \$16,500, representing 75% of the total penalty; and (b) one check to “The Chanler Group
5 in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$5,500, representing 25% of the total
6 penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010,
7 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony E. Held, Ph.D., P.E., whose
8 information shall be provided five calendar days before the payment is due (if different than the
9 information already provided to Defendants under Section 3.1 above).

10 Payment shall be delivered to Held’s counsel at the following address:

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

14 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

15 The parties reached an accord on the compensation due to Held and his counsel under general
16 contract principles and the private attorney general doctrine codified at California Code of Civil
17 Procedure (CCP) §1021.5. Defendants shall reimburse Held and his counsel \$25,000 for fees and
18 costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a
19 settlement in the public interest. This figure includes Held’s future fees and costs including
20 attorney’s fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
21 other legal work performed after the execution of this Consent Judgment incurred in an effort to
22 obtain finality of the case. However, in the event a third party were to appeal entry of this Consent
23 Judgment, Plaintiff and his counsel shall be entitled to seek their reasonable attorney’s fees and costs
24 associated with all appellate work defending the entry of judgment pursuant to CCP § 1021.5.
25 Notwithstanding the foregoing, Defendants reserve the right to contest Plaintiff’s request for fees in
26 connection with such third party appeal and do not acknowledge Plaintiff’s right to such fees.

1 The check for reimbursement of fees and costs shall be made payable to “The Chanler Group”
2 and shall be delivered on or before February 9, 20117, to the following address:

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

8 A separate 1099 shall be issued to “The Chanler Group” (EIN: 94-3171522) for the amount of
9 the reimbursement of Plaintiff’s fees and costs.

10 **5. JOINT AND SEVERAL LIABILITY**

11 Defendants shall be jointly and severally liable for the payments required under Sections 3
12 and 4 of this Consent Judgment.

13 **6. RELEASE OF ALL CLAIMS**

14 **6.1 Held’s Release of Defendants**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4, Held, on behalf of himself, his past and current
17 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
18 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
19 participate in, directly or indirectly, any form of legal action and releases all claims, including,
20 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
21 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
22 expenses (including, but not limited to, investigation fees, expert fees, and attorney’s fees) of any
23 nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against
24 Defendants and each of their downstream wholesalers, licensors, licensees, auctioneers, retailers,
25 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
26 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
27 shareholders, agents, and employees, and sister and parent entities, (collectively “Releasees”) that
28 arise under Proposition 65, as such claims relate to the Products. The parties further understand and
agree that this release shall not extend upstream to any entities that manufactured the Products for

1 Defendants or any component parts thereof or to any distributors or suppliers who sold the Products
2 or any component parts thereof to Defendants.

3 Held also, on behalf of himself and his agents, attorneys, representatives, successors and
4 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities and demands of Held of any nature, character or kind, known or unknown, suspected or
8 unsuspected, arising out of the subject matter of this dispute. Held acknowledges that he is familiar
9 with Section 1542 of the California Civil Code, which provides as follows:

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

14 Held, in his individual capacity only and *not* in his representative capacity, on behalf of
15 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
16 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
17 him by the provisions of Section 1542 of the California Civil Code as well as under any other state or
18 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
19 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
20 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
21 discovery or existence of any such additional or different claims or facts arising out of the released
22 matters.

23 **6.2 Defendants' Release of Held**

24 Defendants, on behalf of themselves and their Releasees, waive any and all claims against
25 Held, his attorneys, and other representatives for any and all actions taken by Held and his attorneys
26 and other representatives, whether in the course of investigating claims or otherwise seeking
27 enforcement of Proposition 65 against them in this matter, and/or with respect to the Products.
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7. **COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties, in which event any monies that have been provided to Plaintiff or his counsel pursuant to Section 3 and Section 4 above, shall be refunded within fifteen (15) days.

8. **SEVERABILITY**

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 remaining shall not be adversely affected.

9. **ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

10. **GOVERNING LAW**

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 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Defendants shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

1 **11. NOTICES**

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

6 . To Defendants:	To Held:
7 General Counsel	Proposition 65 Coordinator
8 Brunswick Corporation	The Chanler Group
9 1 N. Field Court	2560 Ninth Street
Lake Forest, IL 60045	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

10 With a copy to:
11 Edward P. Sangster, Esq.
12 Ramiz I. Rafeedie, Esq.
K & L Gates LLP
Four Embarcadero Center, Ste. 1200
San Francisco, CA 94111-4024

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

15 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

22 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

23 Held and Defendants agree to mutually employ their, and their counsel's, best efforts to
24 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
25 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
26 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
27 Consent Judgment, which Held shall draft and file, and Defendants shall join. If any third party
28 objection to the noticed motion is filed, Held and Defendants shall work together to file a joint reply

1 and appear at any hearing before the Court. This provision is a material component of the Consent
2 Judgment and shall be treated as such in the event of a breach. If the Superior Court does not
3 approve the motion to approve this Consent Judgment, and if the parties choose not to pursue a
4 modified Consent Judgment within 30 days after the Court's denial of the motion to approve, then,
5 upon remittitur, all payments made pursuant to this Consent Judgment will be returned to counsel for
6 Defendants.

7 **15. MODIFICATION**

8 This Consent Judgment may be modified only: (1) by written agreement of the parties and
9 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
10 of any party and entry of a modified Consent Judgment by the Court.

11 **16. AUTHORIZATION**

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

15 **AGREED TO:**

16 **Date:** APPROVED
By Tony Held at 8:17 am, Jan 26, 2011

17 **By:** Anthony E. Held
18 **Plaintiff,**
19 **Anthony E. Held, Ph.D., P.E.**

15 **AGREED TO:**

16 **Date:** January 25, 2011

17 **By:** Richard P. Zelisko
18 **Defendant,**
19 **Attwood Corporation**

20 **AGREED TO:**

21 **Date:** January 25, 2011

22 **By:** Richard P. Zelisko
23 **Defendant,**
24 **Brunswick Corporation**

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