

FILED

DEC 02 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, PH.D., P.E.,)

17 Plaintiff,)

18 v.)

19 Y & Z WORLD DEVELOPMENT INC.; *et al.*,)

20 Defendants.)

Case No.: CIV-1106221

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND SETTLEMENT
AGREEMENT

Date: November 20, 2013

Time: 8:30 a.m.

Dept.: D06

Judge: Hon. Roy O. Chernus

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant Y & Z World Development Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Settlement Pursuant to C.C.P. Section 664.6 (the "Settlement Agreement"), and following this Court's issuance of an Order approving this Proposition 65 settlement and Settlement Agreement on _____.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Settlement Agreement attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: _____
DEC 02 2013

LYNN DURYEE
JUDGE OF THE SUPERIOR COURT

Exhibit A

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, PH.D., P.E.,)

17 Plaintiff,)

18 v.)

19 Y & Z WORLD DEVELOPMENT INC.; and)
20 DOES 1-150, inclusive,)

21 Defendants.)
22
23
24
25
26
27
28

Case No.: CIV-1106221

**SETTLEMENT PURSUANT TO C.C.P.
SECTION 664.6**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Y & Z World Development Inc.**

3 This settlement agreement (“Settlement Agreement”) is entered into by and between
4 Anthony E. Held, Ph.D., P.E., (“Held”) and Y & Z World Development Inc. (“Y & Z”), with Held
5 and Y & Z 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 Y & Z World Development Inc.**

11 Y & Z 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 Y & Z has manufactured, imported, distributed, sold and/or offered for sale apparel that
16 contains di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 health hazard
17 warnings. DEHP is on the Proposition 65 list as a chemical known to the State of California to
18 cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Settlement Agreement are defined as follows: apparel
21 containing DEHP including, but not limited to, *WDNY Coat, Cranberry, Style 15737* manufactured,
22 imported, distributed, sold and/or offered for sale in California by Y & Z, hereinafter the
23 “Products.”

24 **1.6 Notices of Violation**

25 On December 21, 2010, Held served Y & Z and various public enforcement agencies with a
26 document entitled “60-Day Notice of Violation” that provided the recipients with notice of alleged
27 violations of Proposition 65 based on Y & Z’s alleged failure to warn consumers that the apparel
28

1 exposed users in California to DEHP, hereinafter the "Notice." To the best of the Parties'
2 knowledge, no public enforcer has commenced and prosecuted an action against the alleged
3 violations set forth in the Notice.

4 **1.7 Complaint**

5 On December 21, 2011, Held filed a complaint in the Superior Court in and for the County
6 of Marin against Y & Z World Development Inc., and Does 1 through 150, *Held v. Y & Z World*
7 *Development Inc., et al.*, Case No. CIV-1106221 ("Complaint" or "Action"), alleging violations of
8 Proposition 65, based on the alleged exposures to DEHP contained in certain apparel sold by
9 Y & Z.

10 **1.8 No Admission**

11 Y & Z denies the material, factual and legal allegations contained in Held's Notice and
12 Complaint and maintains that all products that it has manufactured, imported, distributed, sold
13 and/or offered for sale in California, including the Products, have been and are in compliance with
14 all laws. Nothing in this Settlement Agreement shall be construed as an admission by Y & Z of any
15 fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement
16 constitute or be construed as an admission by Y & Z of any fact, finding, conclusion, issue of law,
17 or violation of law. However, this section shall not diminish or otherwise affect Y & Z's
18 obligations, responsibilities, and duties under this Settlement Agreement.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has
21 jurisdiction over Y & Z as to the allegations contained in the Complaint, that venue is proper in the
22 County of Marin and that this Court has jurisdiction to enforce the provisions of this Settlement
23 Agreement under Code of Civil Procedure, section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Settlement Agreement, the term "Effective Date" shall mean February
26 28, 2013.

27
28

1 **2. INJUNCTIVE RELIEF; REFORMULATION**

2 **2.1 Reformulation Standard**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million (“ppm”)) in each accessible component when
5 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
6 8270C or any other methodology utilized by federal or state agencies for the purpose of determining
7 the DEHP content in a solid substance.

8 **2.2 Reformulation Commitment**

9 As of the Effective Date all Products acquired for importation, distribution or sale in the
10 State of California by Y & Z shall be Products that qualify as Reformulated Products as defined in
11 Section 2.1 above.

12 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

13 In settlement of all the claims referred to in this Settlement Agreement, Y & Z shall pay a
14 total of \$12,000 in civil penalties in accordance with this Section. Each penalty payment will be
15 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
16 the funds remitted to the California Office of Environmental Health Hazard Assessment
17 (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

18 **3.1 Initial Civil Penalty**

19 Y & Z shall pay an initial civil penalty in the amount of \$2,000 on or before February 28,
20 2013. Y & Z shall issue two separate checks to: (a) “OEHHA” in the amount of \$1,500; and (b)
21 “Law Office of Eugene S. Alkana in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$500.
22 All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

23 **3.2 Final Civil Penalty**

24 Y & Z shall pay a final civil penalty of \$10,000 on or before April 15, 2013. The final civil
25 penalty shall be waived in its entirety, however, if, no later than April 1, 2013, an officer of Y & Z
26 provides Held with written certification that, as of the date of such certification and continuing into
27 the future, Y & Z has met the reformulation standard specified in Section 2.1 above, such that all
28

1 Products manufactured, imported, distributed, sold and offered for sale in California by Y & Z are
2 Reformulated Products. Held must receive any such certification on or before April 1, 2013. The
3 certification in lieu of a final civil penalty payment provided by this Section is a material term, and
4 time is of the essence. Y & Z shall issue two separate checks for its final civil penalty payments to:
5 (a) "OEHHHA" in the amount of \$7,500; and (b) "The Chanler Group in Trust for Anthony E. Held,
6 Ph.D., P.E." in the amount of \$2,500.

7 **3.3 Payment Procedures**

8 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 9 (a) All payments owed to Held, pursuant to Sections 3.1 and 3.2, shall be
10 held in trust pending the Court's approval of this Settlement Agreement
11 and shall be delivered to the following payment address:

12 Law Office of Eugene S. Alkana
13 131 N. El Molino Avenue, Suite 310
Pasadena, CA 91101

14 Mr. Alkana shall: (a) confirm in writing within five days of receipt that the funds have
15 been deposited in a trust account; and (b) within two days of the date of the hearing on which the
16 Court approves the Settlement Agreement, deliver the payment made out to "The Chanler Group
17 in Trust for Anthony E. Held, Ph.D., P.E." at the following address:

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

- 21 (b) All payments owed to OEIIHA (EIN: 68-0284486), pursuant to Sections
22 3.1 and 3.2, shall be delivered directly to OEIIHA (Memo line "Prop 65
23 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Y & Z shall issue separate 1099 forms for each payment to Held, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Held then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Y & Z shall pay \$10,000 for fees and costs incurred as a result of investigating, bringing this matter to Y & Z's attention, and negotiating a settlement in the public interest, but only in the event the final civil penalty provided in Section 3.2 is waived. If the civil penalty provision in Section 3.2 is not waived, then no reimbursement of fees and costs shall be due. Y & Z shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or before February 28, 2013, to the address listed in Section 3.3.1 above.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Held's Public Release of Proposition 65 Claims**

3 Held acting on his own behalf and in the public interest releases Y & Z, its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
5 and each entity to whom Y & Z directly or indirectly distributes or sells Products, including, but not
6 limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
7 members, and licensees ("Releasees"), from all claims for violations of Proposition 65 up through
8 the Effective Date based on exposure to DEHP from the Products as set forth in the Notice.
9 Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition
10 65 with respect to exposure to DEHP from the Products as set forth in the Notice.

11 **5.2 Held's Individual Release of Claims**

12 Held also, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
15 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
16 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
17 Products manufactured, distributed or sold by Y & Z.

18 **5.3 Y & Z's Release of Held**

19 Y & Z on behalf of itself, its past and current agents, representatives, attorneys, successors,
20 and/or assignees, hereby waives any and all claims against Held, his attorneys and other
21 representatives, for any and all actions taken or statements made (or those that could have been
22 taken or made) by Held and his attorneys and other representatives, whether in the course of
23 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
24 respect to the Products.

1 **6. COURT APPROVAL**

2 This Settlement Agreement is not effective until it is approved by the Court and shall be null
3 and void if, for any reason, it is not approved by the Court within one year after it has been fully
4 executed by all Parties.

5 **7. SEVERABILITY**

6 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this
7 Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable
8 provisions remaining shall not be adversely affected.

9 **8. GOVERNING LAW**

10 The terms of this Settlement Agreement shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed,
12 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
13 provisions of this Settlement Agreement are rendered inapplicable or no longer require as a result of
14 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
15 Products, then Y & Z shall notify Held and have no further obligations pursuant to this Settlement
16 Agreement with respect to, and to the extent that, the Products are so affected.

17 **9. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class,
20 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
21 other Party at the following addresses:

22 To Y & Z:

23 Eugene S. Alkana
24 Law Office of Eugene S. Alkana
25 131 N. El Molino Ave., Ste. 310
26 Pasadena, CA 91101

22 To Held:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 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 Settlement Agreement may be executed in counterparts and by facsimile or .pdf
3 signature, each of which shall be deemed an original, and all of which, when taken together, shall
4 constitute one and the same document. A facsimile or .pdf signature shall be as valid as the
5 original.

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

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

9 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

10 Held and Y & Z agree to mutually employ their best efforts to support the entry of this
11 agreement as a Settlement Agreement and obtain approval of the Settlement Agreement by the
12 Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety
13 Code § 25249.7, a noticed motion is required to obtain judicial approval of this Settlement
14 Agreement, which Held shall draft and file, and Defendant shall not oppose. If any third party
15 objection to the noticed motion is filed, Held and Y & Z shall work together to file a joint reply and
16 appear at any hearing before the Court. This provision is a material component of the Settlement
17 Agreement and shall be treated as such in the event of a breach.

18 **13. MODIFICATION**

19 This Settlement Agreement may be modified only: (1) by written agreement of the Parties
20 and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful
21 motion of any Party and entry of a modified Settlement Agreement by the Court.
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. AUTHORIZATION

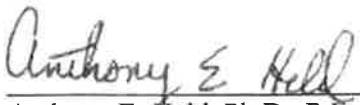
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: October 3, 2013

Date: _____

By: 
Anthony E. Field, Ph.D., P.E.

By: _____
Warren Donner, President
Y & Z World Development Inc.

California Health & Safety Code § 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

Held and Y & Z agree to mutually employ their best efforts to support the entry of this agreement as a Settlement Agreement and obtain approval of the Settlement Agreement by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Settlement Agreement, which Held shall draft and file, and Defendant shall not oppose. If any third party objection to the noticed motion is filed, Held and Y & Z shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Settlement Agreement and shall be treated as such in the event of a breach.

13. MODIFICATION

This Settlement Agreement may be modified only: (1) by written agreement of the Parties and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Settlement Agreement by the Court.

14. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: 2/27/13

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

By: 
Wazra Donner, President
Y & Z World Development Inc.