

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
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.

ENDORSED
FILED
San Francisco County Superior Court

DEC 12 2011

12/12/2011

CAH

CLERK OF THE COURT
CYNTHIA S. [unclear]
Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 ALLSTAR MARKETING GROUP, LLC; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No.: CGC-11-510332

MODIFIED ~~PROPOSED~~
JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND AMENDED
CONSENT JUDGMENT

Date: December 12, 2011

Time: 9:30

Dept.: 302

Judge: Judge Harold E. Kahn

1 Plaintiff, ANTHONY E. HELD, Ph.D., P.E. and defendant, ALLSTAR MARKETING
2 GROUP, LLC, having agreed through their respective counsel that Judgment be entered pursuant to
3 the terms of the Proposition 65 settlement agreement memorialized in the mutually executed
4 *Amended* Consent Judgment, and following the issuance of an Order approving the parties'
5 settlement,

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 *Amended* Consent Judgment attached hereto as Exhibit 1. By stipulation of the
9 parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure §
10 664.6.

11
12 **IT IS SO ORDERED.**

HAROLD KAHN

13
14 Dated: DEC 12 2011

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Steven S. Sayad, State Bar No. 104866
2 Laurence D. Haveson, State Bar No. 152631
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION

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

15 Plaintiff,)

16 v.)

17 ALLSTAR MARKETING GROUP, LLC, and)
18 DOES 1-600, inclusive,)

19 Defendants.)
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27)
28)

Case No. CGC-11-510332

**AMENDED [PROPOSED]
CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This *Amended* Consent Judgment (“Consent Judgment”) is entered into by and between
4 Plaintiff Anthony E. Held, Ph.D., P.E. (“Held” or “Plaintiff”) and Defendant Allstar Marketing
5 Group, LLC (“Allstar”), with Plaintiff and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Allstar**

11 Allstar employs 10 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 Allstar has manufactured, distributed and/or sold, in the State of
16 California, Buxton cell phone wallets that expose users to benzyl butyl phthalate (“BBP”), di-
17 n-butyl phthalate (“DBP”), di(2-ethylhexyl)phthalate (“DEHP”) or lead, without first providing a
18 “clear and reasonable warning” under Proposition 65. BBP, DBP, DEHP, and lead are listed
19 pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects
20 and other reproductive harm. Allstar denies Held’s allegations.

21 **1.5 Notices of Violation**

22 1.5.1 On December 30, 2010, Held served Allstar and various public
23 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided
24 public enforcers and Allstar with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers that wallets, including, but not limited to, *Design by Buxton Cell*
26 *Phone Wallet, model number BX131124 (#7 40275 00230 8)*, that Allstar manufactured,
27 distributed and/or sold exposed users in California to DEHP.

1 1.5.2 On September 20, 2011, Held served Allstar and various public
2 enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” that
3 provided public enforcers and Allstar with notice of alleged violations of Health & Safety Code §
4 25249.6 for failing to warn consumers that wallets, including, but not limited to, *Design by*
5 *Buxton Cell Phone Wallet, model number BX131124 (#7 40275 00230 8)*, that Allstar
6 manufactured, distributed and/or sold exposed users in California to lead, BBP and DBP.

7 **1.6 Complaint**

8 On April 19, 2011, Held, acting, in the interest of the general public in California, filed a
9 complaint in the Superior Court in and for the County of San Francisco, alleging violations of
10 Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in cases for
11 mobile electronic devices, manufactured, distributed and/or sold by Allstar. In the event that no
12 public enforcer undertakes diligent prosecution of the allegations set forth in the Supplemental
13 Notice prior to the expiration of the 60-Day Notice period, the complaint shall be deemed
14 amended to include said allegations. This action shall hereinafter be referred to as the “Action.”

15 **1.7 No Admission**

16 The Parties enter into this Consent Judgment as a full and final settlement of all claims
17 that were raised in the Complaint or that could have been raised in the Complaint, arising out of
18 the facts or conduct alleged therein. By execution of this Consent Judgment and agreeing to
19 comply with its terms, Allstar does not admit any facts or conclusions of law, including, but not
20 limited to, any facts or conclusions of law suggesting or demonstrating any violations of
21 Proposition 65 or any other statutory, common law, or equitable requirements relating to BBP,
22 DBP, DEHP and/or lead in Covered Products. This Consent Judgment is the product of
23 negotiation and compromise and is accepted by Allstar for purposes of settling, compromising,
24 and resolving issues disputed in this Action. However, this section shall not diminish or
25 otherwise affect the obligations, responsibilities, and duties of Allstar under this Consent
26 Judgment.

1 **1.8 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Allstar as to the allegations contained in the Complaint, that venue is proper in
4 the County of San Francisco, and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 The term “Covered Products” means Buxton Cell Phone Wallets manufactured,
8 distributed and/or sold by Allstar.

9 2.2 The term “Compliance Date” means the date this Consent Judgment is approved
10 by the Court.

11 **3. INJUNCTIVE RELIEF**

12 3.1 Commencing on the Compliance Date, Allstar shall not sell, ship, or offer for sale
13 in California any Covered Product containing BBP, DBP, or DEHP in concentrations exceeding
14 0.1 percent by weight (1,000 parts per million (“ppm”)) when analyzed pursuant to any
15 methodology utilized by federal or state agencies for the purpose of determining phthalate content
16 in a solid substance.

17 3.2 Commencing on the Compliance Date, Allstar shall not sell, ship, or offer for sale
18 in California any Covered Product containing more than 100 ppm of lead when analyzed pursuant
19 to EPA testing methodologies 30508 and 6010B, or equivalent methodologies utilized by federal
20 or state agencies for the purpose of determining lead content in a solid substance.

21 **4. ENFORCEMENT OF CONSENT JUDGMENT**

22 4.1 **General Enforcement Provisions.** Any Party may, by motion or application for
23 an order to show cause before the San Francisco Superior Court, enforce the terms and conditions
24 contained in this Consent Judgment. A Party may file such a motion or application only after that
25 Party first provides 30 days notice to the Party allegedly failing to comply with the terms and
26 conditions of this Consent Judgment and attempts to resolve such Party’s failure to comply in an
27 open and good faith manner for a period of no less than 30 days.

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1 **5. MONETARY PAYMENTS**

2 **5.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

3 Allstar shall pay \$30,000 in civil penalties, of which \$20,000 shall be automatically
4 waived in exchange for Allstar’s agreement to sell only Covered Products that comply with
5 Sections 3.1 and 3.2 in the future. The remaining \$10,000 is to be apportioned in accordance with
6 California Health & Safety Code § 25249.12 (c) & (d), with 75% of these funds remitted to the
7 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
8 remaining 25% of the amount remitted to Anthony E. Held, Ph.D., P.E. as provided by California
9 Health & Safety Code §25249.12(d). Allstar shall issue two separate checks for the payment: (a)
10 one check made payable to “The Chanler Group in trust For Office of Environmental Health
11 Hazard Assessment” in the amount of \$7,500, representing 75% of the total payment; and (b) one
12 check to “The Chanler Group in trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$2,500,
13 representing 25% of the total payment. Two separate 1099s shall be issued for the above
14 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
15 Anthony E. Held, Ph.D., P.E., whose information shall be provided five calendar days before the
16 payment is due.

17 Payment shall be delivered to Held’s counsel within two business days of the Compliance
18 Date, at the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

24 **5.2 Attorney Fees and Costs**

25 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
27 issue to be resolved after the material terms of the agreement had been settled. Allstar then
28 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
29 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due

1 to Held and his counsel under general contract principles and the private attorney general doctrine
2 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through
3 the mutual execution of this agreement and obtaining court approval thereof. Allstar, on behalf of
4 itself and those in its chain of distribution, shall reimburse Held and his counsel a total of \$45,000
5 for fees and costs incurred and to be incurred as a result of investigating, bringing this matter to
6 Allstar's attention, and litigating and negotiating a settlement in the public interest. Allstar shall
7 issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to
8 "The Chanler Group" to be delivered within two business days of the Compliance Date, to the
9 following address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

13 6. CLAIMS COVERED AND RELEASED

14 6.1 This Consent Judgment is a full, final, and binding resolution between Held, in the
15 public interest, and Allstar and its parents, shareholders, divisions, subdivisions, subsidiaries,
16 partners, affiliates, and sister companies and their successors and assigns ("Defendant
17 Releasees"), and their distributors, wholesalers, customers, retailers, franchisees, cooperative
18 members, licensors, and licensees, and any other person or entity to whom they directly or
19 indirectly distribute or sell Covered Products, including, but not limited to, Buxton Acquisition
20 Co. ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or
21 could have been asserted in the public interest against Allstar, Defendant Releasees, and
22 Downstream Defendant Releasees regarding the failure to warn about exposure to DEHP and/or
23 lead in Covered Products.

24 6.2 Held on behalf of himself, his past and current agents, representatives, attorneys,
25 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
26 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
27 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,

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1 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
2 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
3 known or unknown, fixed or contingent (collectively "Claims"), against Allstar, Defendant
4 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
5 regarding the failure to warn about exposure to DEHP and/or lead in Covered Products.

6 6.3 Held also, in his individual capacity only and *not* in his representative capacity,
7 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
8 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
9 claims, liabilities and demands of Held of any nature, character or kind, whether known or
10 unknown, suspected or unsuspected, against Allstar, Defendant Releasees, and Downstream
11 Defendant Releasees, limited to and arising out of alleged or actual exposures to lead, BBP, DBP
12 and/or DEHP in Covered Products Held further provides a general release herein which shall be
13 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
14 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
15 Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
16 of the subject matter of the Complaint. Held acknowledges that he is familiar with Section 1542
17 of the California Civil Code, which provides as follows:

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

21 Held, in his individual capacity only and *not* in his representative capacity, expressly waives and
22 relinquishes any and all rights and benefits which he may have under, or which may be conferred
23 on him by the provisions of Section 1542 of the California Civil Code as well as under any other
24 state or federal statute or common law principle of similar effect, to the fullest extent that he may
25 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
26 intention, the release hereby given shall be and remain in effect as a full and complete release
27

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1 notwithstanding the discovery or existence of any such additional or different claims or facts
2 arising out of the released matters.

3 6.4 Allstar waives any and all Claims against Held, his attorneys, and other
4 representatives for any and all actions taken or statements made (or those that could have been
5 taken or made) by Held and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
7 matter, and/or with respect to the Covered Products.

8 6.5 Allstar also provides a general release herein which shall be effective as a full and
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character
11 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
12 Action. Allstar acknowledges that it is familiar with Section 1542 of the California Civil Code,
13 which provides as follows:

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

17 Allstar expressly waives and relinquishes any and all rights and benefits which it may have under,
18 or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as
19 well as under any other state or federal statute or common law principle of similar effect, to the
20 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.
21 In furtherance of such intention, the release hereby given shall be and remain in effect as a full
22 and complete release notwithstanding the discovery or existence of any such additional or
23 different claims or facts arising out of the released matters.

24 **7. COURT APPROVAL**

25 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
26 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
27 including all pleading, procedural, and discovery orders.

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1 7.2 Held shall file a motion seeking approval of this Consent Judgment pursuant to
2 California Health & Safety Code § 25249.7(f), and Allstar shall support the entry of such
3 judgment.

4 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
5 and any and all prior agreements between the parties merged herein shall terminate and become
6 null and void, and the Action shall revert to the status that existed prior to the execution date of
7 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
8 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
9 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
10 Action, or in any other proceeding; and (c) the parties agree to meet and confer to determine
11 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

12 **8. GOVERNING LAW**

13 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California, and shall apply only to Covered Products offered for sale in the State of California. In
15 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
16 generally, or as to the Products, then Allstar may provide written notice to Held of any asserted
17 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
18 respect to, and to the extent that, the Products are so affected.

19 8.2 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
23 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
24 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
25 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
26 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
27 this regard, the Parties hereby waive California Civil Code § 1654.

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1 **9. NOTICES**

2 9.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
5 Party by the other Party at the following addresses:

6 To Allstar:

7 Jennifer De Marco
8 General Counsel
9 Allstar Marketing Group, LLC
 2 Skyline Drive
 Hawthorne, NY 10532

10 With a copy to:

11 Jeffrey B. Margulies, Esq.
12 Fulbright & Jaworski LLP
13 555 South Flower Street
 41st Floor
 Los Angeles, California 90071

14 To Held:

15 Proposition 65 Coordinator
16 The Chanler Group
17 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

20 **10. MODIFICATION**

21 10.1 **Modification.** This Consent Judgment may be modified by written agreement of
22 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
23 Party and entry of a modified Consent Judgment by the court.

24 10.2 **Subsequent Legislation.** If, subsequent to the Compliance Date, legislation or
25 regulation is adopted that addresses the BBP, DBP, DEHP and/or lead content of Covered
26 Products sold in California, any Party shall be entitled to request that the Court modify the
27

1 reformulation standards and contained in Sections 3.1 and/or 3.2 of this Consent Judgment for
2 good cause shown.

3 **10.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
4 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
5 modify the Consent Judgment.

6
7 **11. ENTIRE AGREEMENT**

8 11.1 This Consent Judgment contains the sole and entire agreement and understanding
9 of the Parties with respect to all issues and disputes arising from the allegations in the Notice and
10 the Supplemental Notice and/or the Complaint, existing as of the Compliance Date, between Held
11 and Allstar, and any and all prior discussions, negotiations, commitments, or understandings
12 related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or
13 termination of this Consent Judgment shall be binding unless executed in writing by the Party to
14 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed
15 or shall constitute a waiver of any of the other provisions hereof whether or not similar. If,
16 subsequent to the execution of this Consent Judgment, any of the provisions of this Consent
17 Judgment are held by a court to be unenforceable or invalid, the validity of the enforceable
18 provisions remaining shall not be adversely affected.

19 **12. RETENTION OF JURISDICTION**

20 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

22 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

23 13.1 This Consent Judgment may be executed in counterparts and by facsimile or
24 portable document format (pdf), each of which shall be deemed an original, and all of which,
25 when taken together, shall constitute one and the same document.

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1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
3 their respective Parties and have read, understood, and agree to all of the terms and conditions of
4 this Consent Judgment.

5
6 **AGREED TO:**

AGREED TO:

7 Date: December __, 2011

Date: December __, 2011

8 **APPROVED**
By Anthony Held at 11:20 am, Dec 07, 2011

9
10 *Anthony E Held*
11 By: _____
12 Plaintiff Anthony E. Held, Ph.D, P.E.

By: _____
Defendant Allstar Marketing Group, Inc.

13
14 **IT IS SO ORDERED.**

15 Dated: _____

By _____
Judge of the Superior Court

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
3 their respective Parties and have read, understood, and agree to all of the terms and conditions of
4 this Consent Judgment.

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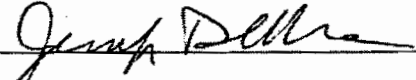

AGREED TO:

AGREED TO:

Date: December __, 2011

Date: December __, 2011

By: _____

By:  _____
Defendant Allstar Marketing Group, Inc. 

Plaintiff Anthony E. Held, Ph.D, P.E.

IT IS SO ORDERED.

Dated: _____

By _____

Judge of the Superior Court