

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.

FILED

MAR 12 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: *A. Garcia, 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 Y & S HANDBAGS, INC.; *et al.*,

18 Defendants.

) Case No.: CIV-1104673

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

) Date: March 23, 2012

) Time: 8:30 a.m.

) Dept.: E

) Judge: Hon. Faye D'Opal

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendant
2 Y & S HANDBAGS, INC. having agreed that a judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and following the issuance of an order approving this
4 Proposition 65 settlement agreement on December __, 2011.

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

9 **IT IS SO ORDERED.**

10 **FAYE D'OPAL**

11 Dated: **MAR 12 2012**

12 _____
13 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,)

16 v.)

17 Y & S HANDBAGS, INC.; and DOES 1-150,)
18 inclusive,)

19 Defendants.)

Case No. CIV1104673

[PROPOSED] CONSENT JUDGMENT

Dept:

Judge:

Date: None set

Complaint Filed: September 20, 2011

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Y&S Handbags, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.,
4 (“Held” or “Plaintiff”) and Y&S Handbags, Inc. (“Y&S” or “Defendant”), with Plaintiff and
5 Defendant 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&S Handbags, Inc.**

11 Held alleges that Y&S employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Y&S has manufactured, imported, distributed and/or sold handbags that
16 contain di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings. DEHP
17 is on the Proposition 65 list as known to cause birth defects and other reproductive harm.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are defined as follows: handbags
20 containing DEHP including, but not limited to, *Magid Handbag, M500 (#7 88389 15746 0)*
21 manufactured, imported, distributed and/or sold by Y&S, hereinafter the “Products”.

22 **1.6 Notice of Violation**

23 On or about March 17, 2011, Held served Y&S and various public enforcement agencies,
24 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
25 notice of alleged violations of Proposition 65 based on Y&S’ alleged failure to warn
26 consumers that the Products exposed users in California to DEHP. To the best of the Parties’
27 knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.
28

1 **1.7 Complaint**

2 On September 20, 2011, Held filed a complaint in the Superior Court in and for the County
3 of Marin against Y&S Handbags, Inc. and Does 1 through 150, *Held v. Y&S Handbags, Inc., et al.*,
4 Case No. CIV1104673 (the “Complaint” or “Action”), alleging violations of Proposition 65, based
5 on the alleged exposures to DEHP contained in certain handbags sold by Y&S.

6 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the parties stipulate that this Court has
17 jurisdiction over Y&S as to the allegations contained in the Complaint, that venue is proper in the
18 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean November 28,
22 2011.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1 Reformulation Standard**

25 “Reformulated Products” are defined as those Products containing DEHP in concentrations
26 less than 0.1 percent (1,000 parts per million (“ppm”)) in each accessible component when
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1 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
2 8270C or any other methodology utilized by federal or state agencies for the purpose of determining
3 the DEHP content in a solid substance (“Reformulation Standard”).

4 **2.2 Reformulated Products Specification Compliance Date**

5 No more than 30 days after the Effective Date, Y&S shall have provided the Reformulation
6 Standard to its then-current Vendors of Products that will be sold or offered for sale to California
7 citizens and shall instruct each Vendor to use reasonable efforts to provide Products that comply
8 with the Reformulation Standard expeditiously.

9 **2.3 Reformulation Commitment**

10 As of the September 1, 2012, all Products manufactured, imported, distributed, sold or
11 offered for sale in the state of California by Y&S shall be Products that qualify as Reformulated
12 Products as defined in Section 2.1 above.

13 **3. MONETARY PAYMENTS**

14 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 Y&S shall make a payment of \$3,500 to be apportioned in accordance with Health &
16 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
17 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
18 remaining 25% of these penalty monies earmarked for Held. This penalty reflects a credit of
19 \$7,000 based on Y&S’s commitment to reformulate the Products pursuant to Section 2.1 above.

20 **3.2 Reimbursement of Held’s Fees and Costs**

21 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
23 issue to be resolved after the material terms of the agreement had been settled. Y&S then
24 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
25 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held
26 and his counsel under general contract principles and the private attorney general doctrine codified
27 at California Code of Civil Procedure section 1021.5, for all work performed, in this matter, except
28 fees that may be incurred on appeal. Under these legal principles, Y&S shall pay the amount of

1 \$30,000 for fees and costs incurred including investigating, noticing, and litigating this matter, in
2 addition to attorney's fees to be incurred in seeking judicial approval of this Consent Judgment
3 including, but not limited to, preparing and filing the approval papers, complying with Proposition
4 65 reporting requirements, and preparing for and attending any and all hearings related to the
5 approval of this Consent Judgment.

6 **3.3 Payment Procedures**

7 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
8 delivered on or before November 28, 2011 to The Chanler Group and shall be held in trust pending
9 the Court's approval of this Consent Judgment.

10 Payments delivered to The Chanler Group shall be made payable, as follows:

- 11 (a) One check made payable to "The Chanler Group in Trust for
12 OEHHA" in the amount of \$2,625;
- 13 (b) One check made payable to "The Chanler Group in Trust for
14 Anthony E. Held, Ph.D., P.E." in the amount of \$875; and
- 15 (c) One check made payable to "The Chanler Group in Trust" in the
16 amount of \$30,000.

17 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
18 Y&S shall issue three separate 1099 forms, as follows:

- 19 (a) The first 1099 shall be issued to the Office of Environmental Health
20 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
21 68-0284486) in the amount of \$2,625;
- 22 (b) The second 1099 shall be issued to Anthony E. Held, Ph.D., P.E. in
23 the amount of \$875, whose address and tax identification number
24 shall be furnished upon request; and
- 25 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
26 3171522) in the amount of \$30,000

1 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
2 the following payment address:

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

8 **4. RELEASE OF ALL CLAIMS**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

10 This Consent Judgment is a full, final and binding resolution between Held, on behalf of
11 himself and the public, and Y&S, of any violation of Proposition 65 that was or could have been
12 asserted by Held against Y&S, its parents, subsidiaries, affiliated entities that are under common
13 ownership, directors, officers, employees, attorneys, and each entity to whom Y&S directly or
14 indirectly distributes or sells Products, including but not limited to downstream distributors,
15 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
16 (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the
17 Products that were sold by Y&S.

18 **4.2 Held’s Public Release of Proposition 65 Claims**

19 In further consideration of the promises and agreements herein contained, Held on behalf of
20 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
21 the interest of the general public, hereby waives all rights to institute or participate in, directly or
22 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
23 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
24 fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees,
25 and attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under
26 Proposition 65 with respect to DEHP in the Products sold by Y&S (collectively “Claims”), against
27 Y&S and Releasees.
28

1 **4.3 Held's Individual Release of Claims**

2 Held also, in his individual capacity only and *not* in his representative capacity, provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, Claims,
5 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, against Y&S and Releasees, limited to and arising out of alleged or actual
7 exposures to DEHP in the Products manufactured, distributed or sold by Y&S.

8 **4.4 Y&S' Release of Held**

9 Y&S on behalf of itself, its past and current agents, representatives, attorneys, successors,
10 and/or assignees, hereby waives any and all Claims against Held, his attorneys and other
11 representatives, for any and all actions taken or statements made (or those that could have been
12 taken or made) by Held and his attorneys and other representatives, whether in the course of
13 investigating Claims or otherwise seeking to enforce Proposition 65 against it in this matter with
14 respect to the Products.

15 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

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

4 **8. NOTICES**

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

9 To Y&S:

10 Pincus Rand, CEO
11 Y&S Handbag, Inc.
12 320 5th Avenue, #7
New York, NY 10001-3102

To Held:

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

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

15 **9. 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
18 one and the same document. A facsimile or pdf signature shall be as valid as the original.

19 **10. 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 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

23 Held and Y&S agree to mutually employ their best efforts to support the entry of this
24 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
25 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code
26 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
27 Held shall draft and file, and Y&S shall join. If any third party objection to the noticed
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1 motion is filed, Held and Y&S shall work together to file a joint reply and appear at any hearing
2 before the Court. This provision is a material component of the Consent Judgment and shall be
3 treated as such in the event of a breach.

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

12 AGREED TO:

13 **APPROVED**

14 *By Tony at 10:44 pm, Dec 06, 2011*

15 Date: _____

16 By: Anthony E. Held

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

12 AGREED TO:

13 Date: _____

14 By: [Signature]

15 Defendant, Y&S Handbags, Inc.