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3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

FILED

SEP 21 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

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 4 WHAT IT'S WORTH, INC.; *et al.*,

20 Defendants.

Case No.: CIV-1103512

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

Date: September 21, 2012

Time: 8:30 a.m.

Dept.: E

Judge: Hon. Faye D'Opal

JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendant 4
2 WHAT IT'S WORTH, INC., having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Consent Judgment entered into by the parties in resolution of this
4 Proposition 65 action, and following the issuance of an order approving the Parties' settlement
5 agreement on September 21, 2012:

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: SEP 21 2012

FAYE D'OPAL
JUDGE OF THE SUPERIOR COURT

Exhibit 1

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

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,)

14 v.)

15 4 WHAT IT'S WORTH, INC.; and DOES 1-)
16 150, inclusive,)

17 Defendants.)

Case No.: CIV-1103512

[PROPOSED] CONSENT JUDGMENT

(Cal. Health & Safety Code § 25249.6 et seq.)

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and 4 What It's Worth, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. ("Dr.
4 Held" or "Plaintiff") and 4 What It's Worth, Inc. ("WIW" or "Defendant"), with Dr. Held and WIW
5 collectively referred to as the "Parties."

6 **1.2 Dr. Held**

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

10 **1.3 WIW**

11 WIW 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 Dr. Held alleges that WIW has manufactured, imported, distributed, sold and/or offered for
16 sale in California belts containing di(2-ethylhexyl)phthalate ("DEHP") without the requisite
17 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are belts containing DEHP,
21 including, but not limited to, *Mudd Jeans, Style #DJBM11056 (#6 14015 68118 7)*, manufactured,
22 imported, distributed, sold and/or offered for sale by WIW in California, hereinafter the "Products."

23 **1.6 Notice of Violation**

24 On April 19, 2011, Dr. Held served WIW and various public enforcement agencies with a
25 document entitled 60-Day Notice of Violation ("Notice") that provided the recipients with notice
26 that alleged that WIW was in violation of Proposition 65 based on its alleged failure to warn
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1 consumers and customers that the Products exposed users in California to DEHP. To the best of the
2 Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 15, 2011, Dr. Held filed a complaint in the Marin County Superior Court
5 ("Complaint"), against 4 What It's Worth and Does 1 through 150, *Held v. 4 What It's Worth, Inc.,*
6 *et al.*, Case No. CIV-1103512 ("Action"), alleging violations of Proposition 65 based on the alleged
7 exposures to DEHP in certain belts sold by WIW.

8 **1.8 No Admission**

9 On August 19, 2011, WIW filed an Answer to the Complaint denying the material, factual
10 and legal allegations contained in the Notice and Complaint. WIW maintains that all products that
11 it has sold in California, including the Products, have been and are in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by WIW of any fact, finding,
13 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
14 constitute or be construed as an admission by WIW of any fact, finding, conclusion, issue of law, or
15 violation of law, such being specifically denied by WIW. However, this Section shall not diminish
16 or otherwise affect WIW's obligations, responsibilities and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over WIW as to the allegations contained in the Complaint, that venue is proper in the
20 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean May 1, 2012.
24
25
26
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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

3 “Reformulated Products” shall mean Products and containing less than 1,000 parts per
4 million (“ppm”) of DEHP, when analyzed pursuant to Environmental Protection Agency testing
5 methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess
6 the DEHP content by weight of a solid substance.

7 **2.2 Reformulation Commitment**

8 From and after the Effective Date, WIW shall not sell or offer to be shipped for sale in
9 California any Products unless they are Reformulated Products as defined in Section 2.1.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12 WIW shall make a payment of \$2,000 to be apportioned in accordance with Health & Safety
13 Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State
14 of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
15 25% of these penalty monies earmarked for Anthony E. Held, Ph.D., P.E.. This penalty amount is
16 based on WIW’s commitment to reformulate the Products pursuant to Section 2.1 above.

17 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

18 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
20 issue to be resolved after the material terms of the agreement had been settled. WIW then expressed
21 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
22 The Parties then attempted to (and did) reach an agreement on the compensation due to Dr. Held and
23 his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure section 1021.5, for all work performed in this matter Under
25 these legal principles, WIW shall pay the amount of \$11,500 for fees and costs incurred
26 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be
27 incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent Judgment in the
28 public interest.

1 **3.3 Payment Procedures**

2 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
3 be delivered to Jeffer Mangels Butler & Mitchell LLP within five (5) business days from the date
4 this Consent Judgment is fully executed by the parties and shall be held in trust by Jeffer Mangels
5 Butler & Mitchell LLP until this Consent Judgment has been approved and entered by the Court, and
6 the Consent Judgment has become final and non-appealable.

7 Payments delivered to Jeffer Mangels Butler & Mitchell LLP shall be made payable,
8 as follows:

- 9 (a) One check made payable to “Jeffer Mangels Butler & Mitchell LLP in
10 Trust for OEHHA” in the amount of \$1,500;
- 11 (b) One check made payable to “Jeffer Mangels Butler & Mitchell LLP in
12 Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$500; and
- 13 (c) One check made payable to “Jeffer Mangels Butler & Mitchell LLP in
14 Trust for The Chanler Group in Trust” in the amount of \$11,500.

15 The attorney of record for Jeffer Mangels Butler & Mitchell LLP shall: (a) confirm in writing within
16 five (5) business days of receipt that the funds have been deposited in a trust account; (b) within two
17 (2) business days of the date upon which the Court’s approval of the Consent Judgment is final and
18 non-appealable, deliver the payment to The Chanler Group in three separate checks, as follows:

- 19 (a) One check made payable to “The Chanler Group in Trust for
20 OEHHA” in the amount of \$1,500;
- 21 (b) One check made payable to “The Chanler Group in Trust for Anthony
22 E. Held, Ph.D., P.E.” in the amount of \$500; and
- 23 (c) One check made payable to “The Chanler Group” in the amount of
24 \$11,500.

25 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved, and
26 the settlement funds have been transmitted to plaintiff’s counsel, WIW shall issue three separate
27 1099 forms, as follows:

- 28 (a) The first 1099 shall be issued to the Office of Environmental Health

1 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
2 68-0284486) in the amount of \$1,500;

3 (b) The second 1099 shall be issued to Anthony E. Held, Ph.D., P.E. in
4 the amount of \$500, whose address and tax identification number shall
5 be furnished upon request; and

6 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
7 3171522) in the amount of \$11,500.

8 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
9 the following payment address:

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

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Final Settlement**

15 This Consent Judgment is a full, final and binding resolution between Plaintiff on behalf of
16 himself and the public interest, and WIW, and its past and current agents, representatives,
17 successors and/or assignees, parents, subsidiaries, affiliated entities that are under common
18 ownership, directors, officers, employees, and attorneys ("WIW Released Parties") of any
19 violation of Proposition 65 that was or could have been asserted in the Complaint against WIW
20 based on failure to warn about alleged exposures to DEHP contained in Products that were sold by
21 WIW prior to the Effective Date as set forth in the Notice and Complaint.

22 **4.2 Release of Proposition 65 Claims Brought in the Public Interest**

23 In further consideration of the promises and agreements herein contained, the injunctive
24 relief commitments set forth in Section 2, and for the payments to be made pursuant to Section 3,
25 Plaintiff acting on his own behalf and in the public interest, releases WIW from any and all claims,
26 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
27 liabilities and demands of plaintiffs of any nature, character or kind, known, suspected or
28 unsuspected, limited to and arising out of the alleged or actual exposures to DEHP in the Products

1 manufactured, distributed or sold by WIW or the WIW Released Parties up through the Effective
2 Date that could have been brought by Held as set forth in the Notice (“Public Interest Released
3 Claims”). Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 with respect to exposures to DEHP from the Products as set forth in the Notice.

5 **4.3 Dr. Held’s Individual Release of Claims**

6 Plaintiff also, in his individual capacity only and *not* in this representative capacity, hereby
7 releases all claims, actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages,
8 losses, claims, liabilities and demands of plaintiffs of any nature, character or kind, known or
9 unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposures to
10 DEHP in the Products manufactured, distributed or sold by WIW or the WIW Released Parties (“Dr.
11 Held Released Claims”).

12 **4.4 WIW’s Release of Dr. Held**

13 WIW on behalf of itself and the WIW Released Parties hereby waives any and all claims
14 against Dr. Held, his attorneys and other representatives, for any and all actions taken or statements
15 made (or those that could have been taken or made) by Dr. Held and his attorneys and other
16 representatives, whether in the course of investigating claims or otherwise seeking to enforce
17 Proposition 65 against it in this matter with respect to the Products.

18 **4.5 Intent of Parties**

19 It is the intention of the Parties to this Agreement that, upon entry of this Consent Judgment
20 and conclusion of any and all appeals or litigation relating thereto, that this Consent Judgment shall
21 be effective as a full and final accord and satisfaction and release of the Dr. Held Released Claims.
22 In furtherance of this intention, Plaintiff is familiar with California Civil Code section 1542, which
23 provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
27 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
28

1 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
2 WITH THE DEBTOR.

3 Plaintiff hereby waives and relinquishes all of the rights and benefits that Plaintiff has, or may
4 have, under California Code section 1542 (as well as any similar rights and benefits which he may
5 have by virtue of any statute or rule of law in any other state or territory of the United States).
6 Plaintiff hereby acknowledges that he may hereafter discover facts in addition to, or different from,
7 those which they now know or believe to be true with respect to the subject of this Consent Judgment
8 and the Dr. Held Released Claims, but that notwithstanding the foregoing, it is Plaintiff's intention
9 hereby to fully, finally, completely and forever settle and release each, every and all of the Dr. Held
10 Released Claims, and that in furtherance of such intention, the release herein given shall be and
11 remain in effect as a full and complete general release, notwithstanding the discovery or existence of
12 any such additional or different facts.

13 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
24 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
25 Consent Judgment are rendered inapplicable by reason of law generally as to the Products, then
26 WIW shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
27 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
28

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve WIW
2 from any obligation to comply with any pertinent state or federal toxics control laws.

3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant to
5 this Consent Judgment shall be sent by (i) personal delivery, (ii) first-class, registered or certified
6 mail, return receipt requested, or (iii) overnight courier on any party by the other party at the
7 following addresses:

8 For WIW:

Copy To:

9 Kyle Soladay
10 4 What It's Worth, Inc.
6565 East Washington Boulevard
Commerce, CA 90040

David Waite, Esq.
Jeffer, Mangels, Butler & Mitchell LLP
1900 Ave Of The Stars, 7th Floor
Los Angeles, CA 90067

11 For Dr. Held:

12 Proposition 65 Coordinator
13 The Chanler Group
2560 Ninth Street
14 Parker Plaza, Suite 214
Berkeley, CA 94710

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

17 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

24 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The Parties agree to mutually employ their best efforts to support the entry of this agreement
26 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
27 manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
28

1 noticed motion is required to obtain judicial approval for this Consent Judgment, which Dr. Held
2 shall draft and file, and WIW shall join. If any third party objection to the noticed motion is filed,
3 the Parties shall work together to file a joint reply and appear at any hearing before the Court. This
4 provision is a material component of the Consent Judgment and shall be treated as such in the event
5 of a breach.

6 **12. MODIFICATION**

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

10 **13. AUTHORIZATION**

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

14
15 **AGREED TO:**

16
17 By: Anthony E. Held
18 Anthony E. Held, Ph.D., P.E.

19
20 Date: July 11, 2012

AGREED TO:

21
22 By: Kyle Soladay
23 Kyle Soladay
24 4 What It's Worth, Inc.

25
26 Date: 6/29/2012