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Troy C. Bailey, State Bar No. 277424
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

FILED

AUG 15 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
BRANDON THOMAS DESIGNS, INC.; et al.,
Defendants.

Case No.: CIV-1104475
**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**
Date: July 25, 2012
Time: 8:30 a.m.
Dept.: B
Judge: Hon. Roy O. Chernus

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
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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.,)

Case No. CIV-1104475

15 Plaintiff,)

16 v.)

[PROPOSED] CONSENT JUDGMENT

17 BRANDON THOMAS DESIGNS, INC.; and)
18 DOES 1-150, inclusive,)

19 Defendants.)
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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Brandon Thomas Designs, Inc.**

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

11 Brandon Thomas employs ten or more persons and is a person in the course of doing business
12 for 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 Brandon Thomas has manufactured, imported, distributed and/or sold belts
16 that contain di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings.
17 DEHP 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 belts including, but not
20 limited to, *Brandon Thomas Pants with Belt, Style WV50231BR* manufactured, imported, distributed
21 and/or sold by Brandon Thomas, hereinafter the “Covered Products.”

22 **1.6 Notice of Violation**

23 On April 19, 2011, Held served Brandon Thomas 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 Brandon Thomas’ alleged failure to
26 warn consumers that the Covered Products exposed users in California to DEHP. To the best of the
27 Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.
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1.7 Complaint

On September 7, 2011, Held filed a complaint in the Superior Court in and for the County of Marin against Brandon Thomas Designs, Inc. and Does 1 through 150, *Held v. Brandon Thomas, et al.*, Case No. CIV-1104475 (“Complaint” or “Action”) alleging violations of Proposition 65 based on the alleged exposures to DEHP contained in certain belts sold by Brandon Thomas.

1.8 No Admission

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

1.9 Consent to Jurisdiction

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

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean three (3) days after the date the attorney of record receives notice that the Court entered this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standard

“Reformulated Products” are defined as those Covered Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when

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.

4 **2.2 Reformulation Commitment**

5 As of the Effective Date all Covered Products manufactured, imported, distributed, sold or
6 offered for sale in the State of California by Brandon Thomas shall be Covered Products that qualify
7 as Reformulated Products as defined in Section 2.1 above.

8 **3. MONETARY PAYMENTS**

9 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

10 Brandon Thomas shall make a payment of \$6,000 to be apportioned in accordance with
11 Health & Safety Code § 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
12 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and
13 the remaining 25% of these penalty monies earmarked for Held. This civil penalty reflects a credit of
14 \$12,000 due to Brandon Thomas' commitment to reformulate the Covered Products pursuant to
15 Section 2.1 above.

16 **3.2 Reimbursement of Held's Fees and Costs**

17 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
19 issue to be resolved after the material terms of the agreement had been settled. Brandon Thomas
20 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
21 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
22 Held and his counsel under general contract principles and the private attorney general doctrine
23 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter, except
24 fees that may be incurred on appeal. Under these legal principles, Brandon Thomas shall pay the
25 amount of \$25,000 for fees and costs incurred investigating, litigating and enforcing this matter,
26 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
27 Court's approval of this Consent Judgment in the public interest.
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3.3 Payment Procedures

3.3.1 Funds Held In Trust. All payments required by Sections 3.1 and 3.2 shall be delivered on or before March 23, 2012 to either The Chanler Group or the attorney of record for Brandon Thomas, and shall be held in trust pending the Court’s approval of this Consent Judgment.

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

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$4,500;
- (b) One check made payable to “The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$1,500 and
- (c) One check made payable to “The Chanler Group in Trust” in the amount of \$25,000.

Payments delivered to Hunton & Williams LLP shall be made payable, as follows:

- (a) One check made payable to “Hunton & Williams LLP in Trust for OEHHA” in the amount of \$4,500;
- (b) One check made payable to “Hunton & Williams LLP in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$1,500; and
- (c) One check made payable to “Hunton & Williams LLP in Trust for The Chanler Group” in the amount of \$25,000.

If Brandon Thomas elects to deliver payments to its attorney of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within five days after the date the attorney of record receives notice that the Court entered this Consent Judgment, and assuming the Court approves and enters the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$4,500;
- (b) One check to “The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$1,500; and

1 (c) One check to “The Chanler Group” in the amount of \$25,000.

2 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved and
3 the settlement funds have been transmitted to Plaintiff’s counsel, Brandon Thomas shall issue three
4 separate 1099 forms, as follows:

5 (a) The first 1099 shall be issued to the Office of Environmental Health
6 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
7 68-0284486) in the amount of \$4,500;

8 (b) The second 1099 shall be issued to Anthony E. Held, Ph.D., P.E. in the
9 amount of \$1,500, whose address and tax identification number shall
10 be furnished upon request; and

11 (c) The third 1099 shall be issued to The Chanler Group (EIN:
12 94-3171522) in the amount of \$25,000.

13 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
14 the following payment address:

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

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Held’s Public Release of Proposition 65 Claims**

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20 Held acting on his own behalf and in the public interest releases Brandon Thomas, its parents,
21 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
22 attorneys, and each entity to whom Brandon Thomas directly or indirectly distributes or sells Covered
23 Products, including but not limited to downstream distributors, wholesalers, customers, retailers,
24 franchisees, cooperative members, licensors, and licensees (collectively “Releasees”) from all claims
25 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
26 Covered Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
27 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Covered
28 Products as set forth in the Notice.

1 **4.2 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 actions,
4 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and
5 demands of Held of any nature, character or kind, whether known or unknown, suspected or
6 unsuspected, against Brandon Thomas and Releasees, limited to and arising out of alleged or actual
7 exposures to the DEHP in the Covered Products manufactured, distributed or sold by Brandon
8 Thomas and Releasees.

9 **4.3 Brandon Thomas’ Release of Held**

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

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California
26 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
27 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
28

1 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
2 preemption or rendered inapplicable by reason of law generally as to the Products, then Brandon
3 Thomas shall provide written notice to Held of any asserted change in law, and shall have no further
4 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
5 so affected.

6 **8. NOTICES**

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

11 To Brandon Thomas:
12 Malcolm Weiss, Esq.
13 Diana Biason, Esq.
14 Hunton & Williams LLP
15 550 South Hope Street
16 Suite 2000
17 Los Angeles, CA 90071

To Held:
Proposition 65 Coordinator
The Chanler Group
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 address to
19 which all notices and other communications shall be sent.

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

27 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
2 Held shall draft and file, and Brandon Thomas shall join. If any third party objection to the noticed
3 motion is filed, Held and Brandon Thomas shall work together to file a joint reply and appear at any
4 hearing before the Court. This provision is a material component of the Consent Judgment and shall
5 be treated as such in the event 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
9 of 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 respective
12 Parties and have read, understood, and agree to all of the terms and conditions of this Consent
13 Judgment.

14
15 AGREED TO:

AGREED TO:

16 **APPROVED**
17 By Anthony Held at 4:57 pm, Mar 15, 2012

18 Date: _____

Date: _____

19 By: Anthony E. Held
20 Plaintiff, Anthony E. Held, Ph.D., P.E.

21 By: _____
22 Defendant, Brandon Thomas Designs, Inc.

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13 Judgment.

14
15 AGREED TO:
16
17 Date: _____
18
19 By: _____
20 Plaintiff, Anthony E. Held, Ph.D., P.E.

AGREED TO:
Date: 3/19/13
By: _____
Defendant, Brandon Thomas Designs, Inc.