

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 28 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner, 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 J & D BRUSH CO., INC.; *et al.*,

18 Defendants.

) Case No.: CIV-1104852

) **[PROPOSED] JUDGMENT PURSUANT**
) **TO TERMS OF PROPOSITION 65**
) **SETTLEMENT AND CONSENT**
) **JUDGMENT**

) Date: March 28, 2012

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendant
2 J & D BRUSH CO., INC. having agreed through their respective counsel that a judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the parties, and following issuance of
4 an order approving this 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
10 **IT IS SO ORDERED.**

11
12 Dated: 3/28/12

ROY CHERNUS

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Troy C. Bailey, State Bar No. 277424
2 Josh Voorhees, State Bar No. 241436
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 J & D BRUSH CO., INC., *et al.*,
18 Defendants.

19 Case No. CIV1104852

20 **[PROPOSED] CONSENT JUDGMENT**

21 Dept:
22 Judge:
23 Date:

24 Complaint Filed: September 30, 2011

1 **1. Introduction**

2 **1.1 Anthony E. Held, Ph.D., P.E. and J & D Brush Co., Inc.**

3 This Consent Judgment is entered into by and between ANTHONY E. HELD, Ph.D., P.E.
4 ("Held" or "Plaintiff") and J & D BRUSH CO., INC. (collectively "J & D" or "Defendants"), with
5 Held and J & D 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 J & D Brush Co., Inc.**

11 J & D 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 J & D has manufactured, imported, distributed, sold and/or offered for sale certain toiletry
16 cases/bags that contain di(2-ethylhexyl)phthalate ("DEHP"), without the requisite Proposition 65
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 Consent Judgment are defined as follows: toiletry
21 bags/cases containing DEHP, including, but not limited to, *Pro Results 10 Piece Bone Comb Kit*,
22 *Model #W10C (#7 36658 91030 8)* manufactured, imported, distributed, sold and/or offered for sale
23 by J & D, hereinafter the "Products".

24 **1.6 Notices of Violation**

25 On April 19, 2011, Held served J & D and various public enforcement agencies with
26 documents entitled "60-Day Notice of Violation" that provided the recipients with notice of alleged
27
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1 violations of Proposition 65 based on J & D's alleged failure to warn consumers that the toiletry
2 bag/cases exposed users in California to DEHP, hereinafter the "Notice". To the best of the Parties'
3 knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On September 30, 2011, Held filed a complaint in the Superior Court in and for the County
6 of Marin against J & D, Inc., and Does 1 through 150, *Held v. J & D Brush Co., Inc., et al.*, Case
7 No. CIV1104852 (the "Complaint" or "Action"), alleging violations of Proposition 65, based on the
8 alleged exposures to DEHP contained in certain toiletry bags/cases sold by J & D.

9 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 22,
25 2011.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

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 manufactured, imported, distributed, sold or offered for
10 sale in the state of California by J & D shall be Products that qualify as Reformulated Products as
11 defined in Section 2.1 above

12 **3. MONETARY PAYMENTS**

13 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

14 J & D shall make a payment of \$8,000 to be apportioned in accordance with Health &
15 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
16 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
17 remaining 25% of these penalty monies earmarked for Held. This penalty reflects a credit of
18 \$16,000 based on J & D’s commitment to reformulate the Products pursuant to Section 2.1 above
19 and due to J & D’s implementation of a warning program prior to the Effective Date.

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. J & D 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
26 Held and his counsel under general contract principles and the private attorney general doctrine
27 codified at California Code of Civil Procedure section 1021.5, for all work performed, in this
28

1 matter, except fees that may be incurred on appeal. Under these legal principles J & D shall pay
2 the total amount of \$28,000 for fees and costs incurred as a result of investigating, bringing this
3 matter to J & D's attention, and negotiating a settlement in the public interest.

4 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
5 delivered on or before November 22, 2011 to either The Chanler Group or the attorney of record
6 for the J & D, and shall be held in trust pending the Court's approval of this Consent Judgment.

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

- 8 (a) One check made payable to "The Chanler Group in Trust for
9 OEHHA" in the amount of \$6,000;
- 10 (b) One check made payable to "The Chanler Group in Trust for
11 Anthony E. Held, Ph.D., P.E. in the amount of \$2,000; and
- 12 (c) One check made payable to "The Chanler Group in Trust" in the
13 amount of \$26,500.

14 Payments delivered to Mintz & Gold, LLP shall be made payable, as follows:

- 15 (a) One check made payable to "Mintz & Gold, LLP in Trust for
16 OEHHA" in the amount of \$6,000;
- 17 (b) One check made payable to "Mintz & Gold, LLP in Trust for
18 Anthony E. Held, Ph.D., P.E." in the amount of \$2,000; and
- 19 (c) One check made payable to "Mintz & Gold, LLP in Trust for The
20 Chanler Group" in the amount of \$26,500.

21 If J & D elects to deliver payments to its attorney of record, such attorney of record shall:

22 (a) confirm in writing within five days of receipt that the funds have been deposited in a trust
23 account; and (b) within two days of the date of the hearing on which the Court approves the
24 Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- 25 (a) One check made payable to "The Chanler Group in Trust for
26 OEHHA" in the amount of \$6,000;
- 27
- 28

1 (b) One check to "The Chanler Group in Trust for Anthony E. Held,
2 Ph.D., P.E." in the amount of \$2,000; and

3 (c) One check to "The Chanler Group" in the amount of \$26,500.

4 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
5 and the settlement funds have been transmitted to Held's counsel, J & D shall issue three separate
6 1099 forms, as follows:

7 (a) The first 1099 shall be issued to the Office of Environmental Health
8 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
9 68-0284486) in the amount of \$6,000;

10 (b) The second 1099 shall be issued to Held in the amount of \$2,000
11 whose address and tax identification number shall be furnished upon
12 request; and

13 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
14 3171522) in the amount of \$26,500.

15 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
16 the following payment address:

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

22 **4. Release Of All Claims**

23 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

24 This Consent Judgment is a full, final and binding resolution between Held, on behalf of
25 himself and the public, and J & D, of any violation of Proposition 65 that was or could have
26 been asserted by Held against J & D, their parents, subsidiaries, affiliated entities that are under
27 common ownership, directors, officers, employees, attorneys, and each entity to whom J & D
28 directly or indirectly distribute or sell Products, including but not limited to downstream
distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and

1 licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained
2 in the Products that were sold by J & D.

3 **4.2 Held's Public Release of Proposition 65 Claims**

4 In further consideration of the promises and agreements herein contained, Held on behalf of
5 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
6 the interest of the general public, hereby waives all rights to institute or participate in, directly or
7 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
8 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,
9 fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and
10 attorneys' fees, but exclusive of fees and costs on appeal, limited to and arising under Proposition
11 65 with respect to DEHP in the Products sold by J & D (collectively "claims"), against J & D and
12 Releasees.

13 **4.3 Held's Individual Release of Claims**

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

21 **4.4 J & D's Release of Held**

22 J & D on behalf of themselves, their past and current agents, representatives, attorneys,
23 successors, and/or assignees, hereby waive any and all claims against Held, his attorneys and other
24 representatives, for any and all actions taken or statements made (or those that could have been
25 taken or made) by Held and his attorneys and other representatives, whether in the course of
26 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
27 respect to the Products.
28

1 **5. Court Approval**

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

5 **6. Severability**

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

9 **7. Governing Law**

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

17 **8. Notices**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment 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 J & D:

23 Steven Gold, Esq.
24 Mintz & Gold, LLP
25 470 Park Avenue South
26 New York, NY 10016

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

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

1 **9. Counterparts; Facsimile Signatures**

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

5 **10. Compliance With Health & Safety Code § 25249.7(f)**

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

8 **11. Additional Post Execution Activities**

9 Held and J & D agree to mutually employ their best efforts to support the entry of this
10 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
11 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code §
12 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
13 Held shall draft and file, and Defendants shall join. If any third party objection to the noticed
14 motion is filed, Held and J & D shall work together to file a joint reply and appear at any hearing
15 before the Court. This provision is a material component of the Consent Judgment and shall be
16 treated as such in the event of a breach.

17 **12. Modification**

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

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13. Authorization

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

AGREED TO:

AGREED TO:

Date: APPROVED
By Anthony Held at 3:02 pm, Nov 29, 2011

Date: 11-21-11

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

By: [Signature] CEO
J & D Brush Co., Inc.