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Brian C. Johnson, State Bar No. 235965
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone:(510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.,

FILED

JUN - 1 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PhD., P.E.,

Plaintiff,

v.

MILLENIUM CLOTHING INC.; *et al.*,

Defendants.

Case No. CIV1103964

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

Date: June 1, 2012

Time: 8:30 a.m.

Dept. E

Judge: Hon. Faye D'Opal

1 Plaintiff, Anthony Held, and defendant, Millenium Clothing Inc., having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving the parties' Proposition 65 settlement and Consent
5 Judgment,

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

11 **IT IS SO ORDERED.**

12
13
14 Dated: 6-1-12

FAYE DOPAL

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PHD., P.E.

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

15 ANTHONY E. HELD, PHD., P.E.,

16 Plaintiff,

17 v.

18 MILLENIUM CLOTHING INC.; *et al*,

19 Defendants.

Case No. CIV1103964

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

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CONSENT JUDGMENT

ASH

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, PhD., P.E.
4 ("Held") and Millenium Clothing Inc. ("Millenium"), with Held and Millenium collectively referred
5 to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Millenium manufactures, distributes, and/or sells belts containing di(2-
16 ethylhexyl)phthalate ("DEHP") in California without first providing the requisite Proposition 65
17 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California
18 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 that are
21 manufactured, sold, and/or distributed in California by Millenium, including, but not limited to,
22 those offered in connection with the *Millenium Shirt with Belt, Style #2427, TUN-2427* (hereinafter
23 "Products").

24 **1.6 Notice of Violation**

25 On May 4, 2011, Held served Millenium and various public enforcement agencies with a
26 60-Day Notice of Violation ("Notice"), a document that informed the recipients of Held's allegation
27 that Millenium was in violation of Proposition 65 for failing to warn its customers and consumers in
28 California that the Products expose users to DEHP.

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1.7 Complaint

On August 9, 2011, Held filed the instant action ("Complaint") against Millenium for the violations of Proposition 65 alleged in the Notice.

1.8 No Admission

Millenium denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Millenium of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Millenium of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Millenium. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument or defense the Parties may have in any other legal proceeding. This Section shall not, however, diminish or otherwise affect Millenium's 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 Millenium as to the allegations contained in the Complaint, that venue is proper in the Marin County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 as a full and binding resolution of all claims which were or could have been raised in the Complaint against Millenium based on the facts alleged therein and in the Notice.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean January 23, 2012.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 **2.1.1 Reformulation Standard**

4 For purposes of this Consent Judgment "Reformulation Standard" shall mean a
5 maximum DEHP content of 1,000 parts per million when analyzed pursuant to Environmental
6 Protection Agency testing methodologies 3580A and 8270C or equivalent method utilized by state or
7 federal agencies to determine DEHP content in a solid substance.

8 **2.1.2 Vendor Notification**

9 No more than 30 days after the date that this Consent Judgment is fully executed by
10 the Parties, Millenium shall provide the Reformulation Standard to each of its then-current vendors
11 of Products that will be sold or offered for sale to California consumers, and shall instruct each
12 vendor to use reasonable efforts to provide only Products that comply with the Reformulation
13 Standard expeditiously. In addressing the obligation set forth in the preceding sentence, Millenium
14 shall not employ statements that will encourage a vendor to delay compliance with the
15 Reformulation Standard. Upon request, Millenium shall provide Held with copies of such vendor
16 notification and Held shall regard such copies as confidential business information.

17 **2.1.3 Compliance Deadline**

18 Commencing on December 15, 2012, and continuing thereafter, Millenium shall only
19 purchase, import, manufacture, or supply to an unaffiliated third party for sale in California,
20 Products that comply with the Reformulation Standard for DEHP established by this Section.

21 **2.1.4 Products Sold Prior to Compliance Deadline**

22 Provided that Millenium has complied with the Reformulation Obligation established
23 by this Section 2.1, sales of Products purchased, imported, manufactured, or supplied to unaffiliated
24 third parties prior to the compliance deadline for implementation of the Reformulation Standard set
25 forth in subsection 2.1.3 above shall not be separately actionable in another case brought pursuant to
26 Health and Safety Code § 25249.7(d) alleging unwarned exposures to DEHP under Proposition 65.

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1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Pursuant to Health & Safety Code § 25249.7(b), Millenium shall pay \$3,000 in civil
4 penalties. This amount reflects a penalty credit of \$7,000 agreed to by Held in response to
5 Millenium's commitment to Proposition 65 compliance, including complying with the
6 Reformulation Standard and vendor notification requirements established by Section 2 above.

7 All civil penalty payments shall be allocated according to Health & Safety Code §
8 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty payment earmarked for the
9 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
10 twenty-five percent (25%) of the penalty payment earmarked for Held.

11 **3.2 Reimbursement of Plaintiff's Fees and Costs**

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

23 **3.3 Payment Procedures**

24 **3.3.1 Payments Held in Trust**

25 All payments made under this Consent Judgment shall be held in trust until the Court
26 approves the settlement. The Parties acknowledge that Held's counsel gave Millenium the option of
27 depositing the funds into its attorney's trust account, but that Millenium elected to have The Chanler
28 Group hold the settlement funds in trust.

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3.3.2 Payment Schedule

All settlement funds required by sections 3.1 and 3.2 shall be delivered to Held's counsel according to the following schedule:

- (a) On or before February 17, 2012, Millenium shall deliver three checks made payable as follows:
 - (1) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$2,250;
 - (2) a second check to "The Chanler Group in Trust for Anthony Held" in the amount of \$750; and
 - (3) a third check to "The Chanler Group in Trust" in the amount of \$7,000.
- (b) On or before March 16, 2012, Millenium shall deliver a fourth check made payable to "The Chanler Group in Trust" in the amount of \$10,000.
- (c) On or before April 13, 2012, Millenium shall deliver a fifth check made payable to "The Chanler Group in Trust" in the amount of \$9,000.

3.3.3 Issuance of 1099 Forms

After the Consent Judgment has been approved, Millenium shall issue three 1099 forms for the payments made pursuant to Sections 3.1 and 3.2, as follows:

- (a) one 1099 form to "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to OEHHA in the amount of \$2,250;
- (b) a second 1099 form to "Anthony Held", whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, for civil penalties paid in the amount of \$750; and
- (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the reimbursement of fees and costs in the amount of \$26,000.

3.3.4 Payment Address

All payments and tax documents required by Sections 3.1, 3.2, and 3.3.3 shall be delivered to Held's counsel at the following address:

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

6 **5. CLAIMS COVERED AND RELEASED**

7 **5.1 Held's Public Interest Release of Proposition 65 Claims**

8 Held acting on his own behalf and in the public interest, releases Millenium, its parent,
9 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
10 and each entity to whom Millenium directly or indirectly distributes or sells, or distributed or sold,
11 the Products, including but not limited to downstream distributors, wholesalers, customers, retailers,
12 franchisees, cooperative members, licensors and licensees (hereinafter collectively referred to as
13 "Releasees") from all claims for violations of Proposition 65 up through the Effective Date for
14 alleged exposures to DEHP from the Products as set forth in the Notice. Compliance with the terms
15 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
16 DEHP contained in the Products as set forth in the Notice.

17 **5.2 Held's Individual Release of Claims**

18 Held, in his individual capacity and on behalf of himself, his past and current agents,
19 representatives, attorneys, successors and/or assignees, and *not* in any other representative capacity,
20 also provides a release to Millenium and the Releasees which shall be effective as a full and final
21 accord and satisfaction, as a bar to all Claims, liabilities, and demands of Held of any nature,
22 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
23 actual exposures to DEHP contained in the Products sold in California by Millenium.

24 **5.3 Millenium's Release of Held**

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

1 **6. 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, in which event any monies that have been provided to
5 Held or his counsel pursuant to Sections 3.1 and 3.2 shall be refunded within fifteen (15) days after
6 receiving written notice from Millenium that the one-year period has expired and the Consent
7 Judgment has not been approved and entered by the Court.

8 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to
10 be unenforceable, the validity of the enforceable provisions remaining shall not be adversely
11 affected.

12 **8. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Millenium
16 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
17 extent that, the Products are so affected.

18 **9. NOTICES**

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

23 For Millenium:

24 Anita Lulla, President
25 Millenium Clothing Inc.
26 1407 Broadway, Suite 2018
27 New York, NY 10018

With a copy to:

24 Jed R. Schlacter, Esq.
25 Schlacter & Associates
26 450 Seventh Avenue, Suite 1308
27 New York, NY 10123

28 For Held:

28 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street

1 Parker Plaza, Suite 214
2 Berkeley, CA 94710

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

5 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

9 **11. POST EXECUTION ACTIVITIES**

10 Held agrees to comply with the reporting form requirements referenced in California Health
11 & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to California
12 Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of
13 this Consent Judgment. In furtherance of obtaining such approval, Held and Millenium and their
14 respective counsel agree to mutually employ their best efforts to support the entry of this agreement
15 as a Consent Judgment and obtain approval of the settlement by the Court in a timely manner. For
16 purposes of this section, "best efforts" shall include, at a minimum, cooperating on the drafting and
17 filing of any papers in support of the required motion for judicial approval.

18 **12. MODIFICATION; ENFORCEMENT**

19 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
20 upon entry of a modified consent judgment by the Court thereon; or (2) a successful motion or
21 application of any party and entry of a modified consent judgment by the Court. The Parties further
22 agree and understand that, in the event of an alleged breach or violation of this Consent Judgment
23 by either Party, both Parties shall, for a period of not less than forty five (45) days, meet and confer
24 in an effort to address the concerns related to such alleged breach or violation before seeking to
25 enforce the terms of this Consent Judgment.

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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

By: Anthony E. Held
Anthony E. Held, PhD., P.E.

By: Anita Lulla
Anita Lulla, President
Millenium Clothing, Inc.

Date: APPROVED
By Tony at 9:51 pm, Jan 30, 2012

Date: 1/23/2012