

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 94710-2565
7 Telephone:(510) 848-8880
8 Facsimile: (510) 848-8118

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

ENDORSED
FILED
San Francisco County Superior Court
JUN 08 2012
CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 PRIDE & JOYS, INC.; *et al.*,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. CGC-11-513302

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

Date: April 2, 2012
Time: 9:30 a.m.
Dept. 302
Judge: Hon. Harold E. Kahn

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

IT IS SO ORDERED.

Dated: 10-8-12

HAROLD KAHN
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

6 Attorneys for Plaintiff
7 ANTHONY E. HELD, PHD., P.E.

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

12 ANTHONY E. HELD, PHD., P.E.,

13 Plaintiff,

14 v.

15 PRIDE & JOYS, INC.; *et al.*,

16 Defendants.
17

Case No. CGC-11-513302

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

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 Pride & Joys, Inc. (“Pride & Joys”), with Held and Pride & Joys 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 Pride & Joys 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, Health & Safety Code
13 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Pride & Joys has manufactured, distributed, and/or offered for sale in
16 California belts containing di(2-ethylhexyl)phthalate (“DEHP”) in California 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 that are
21 manufactured, sold and/or distributed in California by Pride & Joys, including, without limitation,
22 the belt sold in connection with the *Snap Dress with Belt, Style # 413* (collectively “Products”).

23 **1.6 Notice of Violation**

24 On May 4, 2011, Held served Pride & Joys and various public enforcement agencies with a
25 60-Day Notice of Violation (“Notice”), a document that informed the recipients that Pride & Joys
26 was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in
27 California that the Products expose users to DEHP.

28

NE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.7 Complaint

On August 11, 2011, Held filed the instant action (“Complaint”), against Pride & Joys for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

1.8 No Admission

Pride & Joys 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. Nothing in this Consent Judgment shall be construed as an admission by Pride & Joys 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 Pride & Joys of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Pride & Joys. 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 Pride & Joys’ 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 Pride & Joys as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to California Code of Civil Procedure Section 664.6 as a full and binding resolution of all claims which were or could have been raised in the Complaint against Pride & Joys based on the facts alleged therein and in the Notice.

1.10 Effective Date

As used throughout this Consent Judgment, the term “Effective Date” shall mean January 20, 2012.

NK

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation**

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, Pride & Joys shall provide the Reformulation Standard to each of its then-current
11 vendors of Products that will be sold or offered for sale to California consumers, and shall instruct
12 each 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, Pride &
14 Joys shall not employ statements that will encourage a vendor to delay compliance with the
15 Reformulation Standard. Upon request, Pride & Joys 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, Pride & Joys shall
19 only purchase, import, manufacture, or supply to an unaffiliated third party for sale in California,
20 Products that comply with the Reformulation Standard for DEHP content established by Section
21 2.1.1.

22 **2.1.4 Products Sold Prior to Compliance Deadline**

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

1 **3. MONETARY PAYMENTS**

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

3 Within ten (10) days of the Effective Date, Pride & Joys shall pay a total of \$3,000 in civil
4 penalties pursuant to Health & Safety Code section 25249.7(b). This amount reflects a penalty
5 credit of \$7,000 agreed to by Held in response to Pride & Joys' commitment to Proposition 65
6 compliance, including its agreement to reformulate its Products sold in California according to the
7 Reformulation Standard established by Section 2 above.

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

12 **3.2 Reimbursement of Plaintiff's Fees and Costs**

13 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
15 to be resolved after the material terms of the agreement had been settled. Pride & Joys then
16 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
17 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held
18 and his counsel under general contract principles and the private attorney general doctrine codified
19 at California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of
20 fees on appeal, if any. Under these legal principles, within ten (10) days of the Effective Date,
21 Pride & Joys shall pay \$26,000 for all fees and costs incurred investigating, litigating and enforcing
22 this matter, including the fees and costs incurred (and yet to be incurred) drafting, negotiating, and
23 obtaining the Court's approval of this Consent Judgment in the public interest.

24 **3.3 Payment Procedures**

25 **3.3.1 Payments Held in Trust**

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

1 Chanler Group hold the settlement funds in trust. Settlement funds delivered to The Chanler Group
2 shall be in the form of three checks for the following amounts, made payable as follows:

3 (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of
4 \$2,250;

5 (b) a second check to "The Chanler Group in Trust for Anthony Held" in the
6 amount of \$750; and

7 (c) a third check to "The Chanler Group in Trust" in the amount of
8 \$26,000.

9 **3.3.2 Issuance of 1099 Forms**

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

12 (a) one 1099 form to "Office of Environmental Health Hazard Assessment", P.O.
13 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to
14 OEHHA in the amount of \$2,250;

15 (b) a second 1099 form to "Anthony Held", whose address and tax identification
16 number shall be furnished upon request after this Consent Judgment has been fully
17 executed by the Parties, for civil penalties paid in the amount of \$750; and

18 (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the
19 reimbursement of fees and costs in the amount of \$26,000.

20 **3.3.3 Payment Address**

21 All payments and tax documents required by Sections 3.1, 3.2, and 3.3.2 shall be
22 delivered to Held's counsel at the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
28

NK

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Full, Final, and Binding Resolution of Proposition 65 Claims**

3 This Consent Judgment is a full, final, and binding resolution between Held, on behalf of
4 himself and in the public interest, and Pride & Joys, of any violation of Proposition 65 that Held
5 brought or could have brought against Pride & Joys, its parents, subsidiaries, affiliated entities under
6 common ownership, directors, officers, employees, attorneys, and each entity to whom Pride & Joys
7 directly or indirectly distributes or sells Products, including but not limited to, downstream
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
9 licensees ("Releasees"), based on unwarned exposures to DEHP contained in the Products sold by
10 Pride & Joys.

11 **5.2 Held's Public Interest Release of Proposition 65 Claims**

12 In further consideration of the promises and agreements herein contained, Held on behalf of
13 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
14 the public interest, hereby waives all rights to institute or participate in, directly or indirectly, any
15 form of legal action and releases all claims, including, without limitation, all actions and causes of
16 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
17 losses, or expenses--including, but not limited to, investigation fees, expert fees, and attorneys' fees
18 (collectively "Claims") against Pride & Joys and Releasees for unwarned exposures to DEHP
19 contained in the Products sold by Pride & Joys.

20 **5.3 Held's Individual Release of Claims**

21 Held, in his individual capacity only and *not* in his representative capacity, also provides a
22 release to Pride & Joys and Releasees which shall be effective as a full and final accord and
23 satisfaction, as a bar to all Claims, liabilities, and demands of Plaintiff of any nature, character, or
24 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
25 exposures to DEHP contained in the Products sold in California.

26 **5.4 Pride & Joys' Release of Held**

27 Pride & Joys on behalf of itself, its past and current agents, representatives, attorneys,
28 successors, and/or assignees, hereby waives any and all claims against Held and his attorneys and

1 other representatives, for any and all actions taken or statements made (or those that could have been
2 taken or made) by Held and his attorneys and other representatives, whether in the course of
3 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
4 respect to the Products.

5 **6. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and
7 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
8 after it has been fully executed by all Parties, in which event any monies that have been provided to
9 Held or his counsel pursuant to Sections 3.1 and 3.2 above shall be refunded within fifteen days
10 after receiving written notice from Pride & Joys that the one-year period has expired and the
11 Consent Judgment has not been approved and entered by the Court.

12 **7. SEVERABILITY**

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

16 **8. GOVERNING LAW**

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

22 **9. NOTICES**

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

27
28

1 For Pride & Joys:

2 Eli Rousso, President
3 Pride & Joys, Inc.
4 1400 Broadway, Suite 503
5 New York, NY 10018

6 and

7 Jed R. Schlacter, Esq.
8 Schlacter & Associates
9 450 Seventh Avenue, Suite 1308
10 New York, NY 10123

11 For Held:

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

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

19 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **11. POST EXECUTION ACTIVITIES**

24 Held agrees to comply with the reporting form requirements referenced in California Health
25 & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to California
26 Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of
27 this Consent Judgment. In furtherance of obtaining such approval, Held and Pride & Joys and their
28 respective counsel 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. For purposes of this section, "best efforts" shall include, at a minimum, cooperating on the
drafting and filing of any papers in support of the required motion for judicial approval.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. MODIFICATION

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

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:

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

Date: APPROVED
By Tony at 5:19 pm, Jan 23, 2012

AGREED TO:

By: Eli Rousso
Eli Rousso, President
Pride & Joys, Inc.

Date: 1/18/12

NC