



10443857

1 Jennifer Henry, State Bar No. 208221
 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

ENDORSED
 FILED
 ALAMEDA COUNTY

JUL 30 2012

CLERK OF THE SUPERIOR COURT
 BY STACY OXSEN Deputy

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

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

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

15 Plaintiff,

16 v.

17 FINESSE NOVELTY CORP.; and DOES 1-
 18 150, inclusive,

19 Defendants.

Case No. RG12624390

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

Date: July 30, 2012
 Time: 3:00 p.m.
 Dept.: 512
 Judge: Hon. John M. True, III

Reservation No.: R-1296196

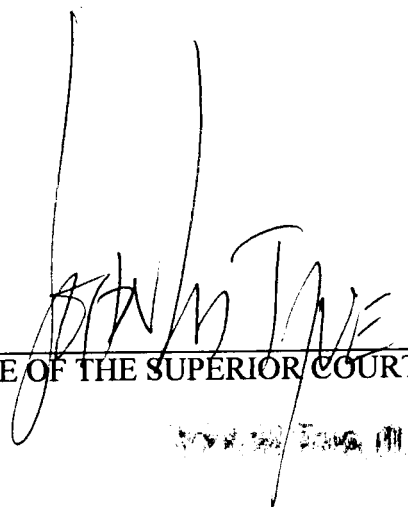
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Plaintiff, Anthony Held, and defendant, Finesse Novelty Corp., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this 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: 7-30-12



JUDGE OF THE SUPERIOR COURT

2

1 Jennifer Henry, State Bar No. 208221
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.

RECEIVED
ALAMEDA COUNTY

JUN 15 2012

CLERK OF THE SUPERIOR COURT

By ~~DELORES J. JONES~~ Deputy

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

14 ANTHONY E. HELD., PH.D., P.E.,

15 Plaintiff,

16 v.

17 FINESSE NOVELTY CORP.; *et al.*,

18 Defendants.

Case No. RG12624390

[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 plaintiff, Anthony E. Held, Ph.D., P.E.
4 ("Held"), and defendant, Finesse Novelty Corp. ("Finesse"), with Held and Finesse collectively
5 referred 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 Finesse 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 & Safety
13 Code § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Finesse sold bracelets containing di(2-ethylhexyl)phthalate ("DEHP")
16 without first providing the clear and reasonable warning required by Proposition 65. DEHP is listed
17 pursuant to Proposition 65 as a chemical known to the state of California to cause birth defects or
18 other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are bracelets manufactured, distributed, sold,
21 or offered for sale in California by Finesse, including, but not limited to, the *Bracelet, #10000B-001*
22 (*#7 82663 49018 2*) (hereinafter, the "Products").

23 **1.6 Notice of Violation**

24 On or about September 19, 2011, Held served Finesse and various public enforcement
25 agencies with a "60-Day Notice of Violation" ("Notice"), a document that informed the recipients of
26 Held's allegation that Finesse was in violation of Proposition 65 for failing to warn its customers and
27 consumers in California that the Products expose users to DEHP.

28

1 **1.7 Complaint**

2 On or about April 6, 2012, Held filed the instant action against Finesse (“Complaint”) for the
3 violations of Health & Safety Code § 25249.6 alleged in the Notice.

4 **1.8 No Admission**

5 Finesse denies the material, factual, and legal allegations contained in the Notice and
6 Complaint, and maintains that all of the products that it has sold in California, including the Products,
7 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
8 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law;
9 nor shall compliance with this Consent Judgment constitute or be construed as an admission of any
10 fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied
11 by Finesse. This section shall not, however, diminish or otherwise affect Finesse’s obligations,
12 responsibilities, and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Finesse as to the allegations in the Complaint, that venue is proper in Alameda
16 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
17 Judgment.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 16, 2012.

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1 Reformulated Products**

22 Commencing on the Effective Date and continuing thereafter, Finesse shall only import,
23 manufacture, sell or distribute for sale in California, Products that contain a maximum of 1,000 parts
24 per million (0.1%) DEHP content by weight in any accessible component (i.e., any component that
25 can be handled or touched during reasonably foreseeable use) when analyzed pursuant to EPA testing
26 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies
27 for the purpose of determining DEHP content in a solid substance.
28

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), Finesse shall pay a civil penalty of \$2,000
4 after application of a credit of \$4,000, agreed to by Held in response to Finesse’s commitment to
5 Proposition 65 compliance, including reformulating the Products to comply with the DEHP content
6 standard established by section 2 above.

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

11 **3.2 Reimbursement of Held’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 to be resolved after the material terms of the agreement had been settled. Shortly after all other
15 settlement terms had been finalized, Finesse expressed a desire to resolve the fee and costs issue.
16 The Parties then attempted to (and did) reach an accord on the compensation due Held and his
17 counsel under general contract principles and the private attorney general doctrine codified at
18 California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees
19 and costs that may be incurred on appeal, if any. Under these legal principles, Finesse shall pay
20 \$29,500 for fees and costs incurred investigating, litigating, and enforcing this matter, including the
21 fees and costs incurred (and yet to be incurred) drafting, negotiating, and obtaining the Court’s
22 approval of this Consent Judgment in the 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 delivered to either The
26 Chanler Group or the attorney of record for the Finesse, and shall be held in trust pending the Court’s
27 approval of this Consent Judgment.

28

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

3 (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500, due
4 on or before May 1, 2012;

5 (b) to "The Chanler Group in Trust for Anthony Held" in the amount of \$500,
6 due on or before May 1, 2012; and

7 (c) to "The Chanler Group in Trust" as follows: due as follows: \$10,000 on or
8 before May 1, 2012; \$10,000 on or before June 1, 2012; and \$9,500 on or before
9 either July 1, 2012 or the date the Court approves the settlement, whichever is
10 sooner.

11 Settlement funds delivered to Allen Matkins Leck Gamble Mallory & Natsis LLP
12 shall be in the form of checks for the following amounts, made payable as follows:

13 (a) to "Allen Matkins Leck Gamble Mallory & Natsis L.L.P in Trust for
14 OEHHA" in the amount of \$1,500, due on or before May 1, 2012;

15 (b) to "Allen Matkins Leck Gamble Mallory & Natsis L.L.P in Trust for
16 Anthony Held" in the amount of \$500, due on or before May 1, 2012; and

17 (c) to "Allen Matkins Leck Gamble Mallory & Natsis LLP in Trust" as follows:
18 due as follows: \$10,000 on or before May 1, 2012; \$10,000 on or before June 1,
19 2012; and \$9,500 on or before either July 1, 2012 or the date the Court approves
20 the settlement, whichever is sooner.

21 If Finesse elects to deliver payments to its attorney of record, such attorney of record
22 shall: (a) confirm in writing within five days of receipt of each payment that the funds have been
23 deposited in a trust account; and (b) within two days of the date of the hearing on which the Court
24 approves the Consent Judgment, deliver the payments to The Chanler Group in three separate
25 checks, as follows:

26 (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$1,500;

27 (b) to "The Chanler Group in Trust for Anthony Held" in the amount of \$500;

28 and

1 (c) to "The Chanler Group in Trust" in the amount of \$29,500.

2 **3.3.2 Issuance of 1099 Forms**

3 After the Consent Judgment has been approved, Finesse shall issue three 1099 forms
4 for the payments made pursuant sections 3.1 and 3.2, as follows:

5 (a) one 1099 form to "Office of Environmental Health Hazard Assessment",
6 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties
7 paid in the amount of \$1,500;

8 (b) a second 1099 form to "Anthony Held", whose address and tax
9 identification number shall be furnished upon request after this Consent Judgment
10 has been fully executed by the Parties, for civil penalties paid in the amount of
11 \$500; and

12 (c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the
13 reimbursement of Held's fees and costs in the amount of \$29,500.

14 **3.3.3 Payment Delivery**

15 All payments and tax forms required by this section shall be delivered to Held's
16 counsel at the following 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. CLAIMS COVERED AND RELEASED**

23 **4.1 Held's Public Release of Proposition 65 Claims**

24 Held, acting on his own behalf and in the public interest, releases Finesse from all claims for
25 violations of Proposition 65 up through the Effective Date based on exposures to DEHP from the
26 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
27 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
28 the Notice.

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4.2 Held's Individual Release of Claims

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

4.3 Finesse's Release of Held

Finesse on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been 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.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Finesse may provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

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

3 **8. NOTICES**

4 Unless specified herein, all correspondence and notices required by this Consent Judgment
5 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
6 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

7 For Finesse:

8 Scott Damast, President
9 Finesse Novelty Corp.
10 2 Channel Drive
11 Port Washington, NY 11050

12 with a copy to:

13 Eileen Nottoli, Esq.
14 Allen Matkins Leck Gamble Mallory & Natsis LLP
15 3 Embarcadero Center, 12th Floor
16 San Francisco, CA 94111

17 For Held:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in California Health
& Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health &
Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of the

1 settlement. In furtherance of obtaining such approval, Held and Finesse and their respective counsel
2 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
3 Judgment and to obtain judicial approval of the same in a timely manner. For purposes of this
4 section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the
5 moving papers and supporting the motion for judicial approval.

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

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

13 **AGREED TO:**

AGREED TO:

14 Date: **APPROVED**
By Tony Held at 10:04 am, Apr 17, 2012

Date: _____

15
16 By: *Anthony E. Held*
ANTHONY E. HELD, PH.D., P.E.

17 By: _____
Scott Damast, President
FINESSE NOVELTY CORP.

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8 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
9 application of any Party and the entry of a modified consent judgment by the Court.

10 **12. AUTHORIZATION**

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

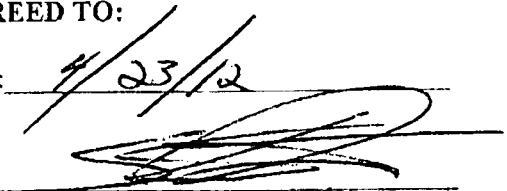
13 **AGREED TO:**

14 Date: _____

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16 By: _____
17 ANTHONY E. HELD, PH.D., P.E.

13 **AGREED TO:**

14 Date: 4/23/12

15
16 By: 
17 Scott Damast, President
18 FINESSE NOVELTY CORP.

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CLERK'S CERTIFICATE OF MAILING

CASE NO: RG12-624390

CASE NAME: Held, Phd. V. Finesse Novelty Corp.

I certify that I am not a party to this action and this correspondence was mailed first class, prepaid postage, in a sealed envelope to the parties at the addresses shown below. The mailing and this certification occurred at the place and on the date shown below:

The Chanler Group
2560 Ninth St.
Parker Plaza, #214
Berkeley, CA 94710

Place of mailing: Hayward, CA

Date of mailing: July 31, 2012

By: STACY OXSEN, Deputy Clerk
Stacy Oxsen