

FILED

OCT 31 2014

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

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MARIN COUNTY SUPERIOR COURT

SEP - 8 2014

1 Clifford A. Chanler, State Bar No. 135534
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
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
7 ANTHONY E. HELD, PH.D., P.E.

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

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

14 Plaintiff,

15 v.

16 ALL ACCESS APPAREL, INC.; and DOES 1-
17 150, inclusive

17 Defendants.

Case No.: CIV1301751

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

Date: 10/28/14

Time: 9:00 am

Dept.: L

Judge: Hon. Mark A. Talamantes

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In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant All Access Apparel, 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 this Proposition 65 settlement and Consent Judgment on _____.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is 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.

OCT 31 2014
Dated: _____

MARK A. TALAMANTES

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PH.D., P.E.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10
11 ANTHONY E. HELD, PH.D., P.E.,)

CASE NO. CIV1301751

12 Plaintiff,)

13 v.)

14 ALL ACCESS APPAREL, INC.; and)
DOES 1-150, inclusive)

[PROPOSED] CONSENT JUDGMENT

15 Defendants.)
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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held Ph.D., P.E. and All Access Apparel, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (“Held”) and All Access Apparel, Inc. (“All Access”), with Held and All Access collectively
5 referred to as the “Parties.” Held is an individual residing in California who seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. All Access employs ten or more persons
8 and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
9 Enforcement Act of 1986, Health and Safety Code section 25249.6, et seq. (“Proposition 65”).

10 **1.2 General Allegations**

11 Held alleges that All Access has manufactured, distributed, sold and offered for sale in the
12 State of California: (i) belts containing di(2-ethylhexyl)phthalate (“DEHP”); and (ii) headphones
13 with vinyl/PVC wires containing DEHP. DEHP is listed under Proposition 65 as a chemical
14 known to cause birth defects and other reproductive harm.

15 **1.3 Product Description**

16 The products that are addressed by this Consent Judgment are: (i) belts containing DEHP
17 including, but not limited to, the *Self Esteem Shirt with Belt*, #414314YI (#6 37677 66627 9); and
18 (ii) headphones with vinyl/PVC wires containing DEHP including, but not limited to, the *Self*
19 *Esteem Shirt with Headphones Set*, VAPSV2I, UPC #6 37677 04954 6, each of which are
20 manufactured, distributed, sold and offered for sale by All Access in the State of California
21 (collectively referred to hereinafter as the “Products”).

22 **1.4 Notice of Violation**

23 On or about April 25, 2012, Held served All Access and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided All
25 Access, and such others, including public enforcers, with notice that alleged that All Access was
26 in violation of Proposition 65 for failing to warn consumers and customers that the Products
27 exposed users in California to DEHP.

28

1 On or about November 15, 2013, Held served All Access and various public enforcement
2 agencies with a document entitled "Supplemental 60-Day Notice of Violation" that provided All
3 Access, and such others, including public enforcers, with notice that alleged that All Access was
4 in violation of Proposition 65 for failing to warn consumers and customers that the Products
5 exposed users in California to DEHP.

6 The Notice and the Supplemental Notice shall hereinafter be collectively referred to as the
7 "Notices." No public enforcer has diligently prosecuted the allegations set forth in the Notices.

8 **1.5 Complaint**

9 On or about April 24, 2013, Held, acting in the interest of the general public of California,
10 filed a complaint in the Superior Court in and for the County of Marin against the All Access, and
11 Does 1-150, *Anthony E. Held, Ph.D., P.E. v. All Access Apparel, Inc., et al.*, Case No.
12 CIV1301751, alleging violations of Proposition 65, based on, *inter alia*, the alleged exposures to
13 DEHP in Products ("Complaint"). On or about April 9, 2014, Held filed a First Amended
14 Complaint incorporating the allegations contained in the Supplemental Notice ("First Amended
15 Complaint"). The Complaint and the First Amended Complaint shall hereinafter be collectively
16 referred to as the Complaint.

17 **1.6 No Admission**

18 All Access denies the material factual and legal allegations contained in Held's Notices
19 and Complaint, and maintains that all products that it has sold and distributed in California,
20 including the Products, have been and are in compliance with all laws. Nothing in this Consent
21 Judgment shall be construed as an admission by All Access, of any fact, finding, issue of law, or
22 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
23 an admission by All Access of any fact, finding, conclusion, issue of law or violation of law, such
24 being specifically denied by All Access. However, this section shall not diminish or otherwise
25 affect the obligations, responsibilities and duties of All Access under this Consent Judgment.
26 Notwithstanding Plaintiff's allegations, All Access maintains that it has not knowingly
27 manufactured, or caused to be manufactured, Products for sale in California which are in
28 violation of Proposition 65.

1 **1.7 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over All Access as to the allegations contained in the Complaint, that venue is proper
4 in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of
5 this Consent Judgment. As an express part of this Consent Judgment, pursuant to Code of Civil
6 Procedure section 664.6, the Court in which this Complaint was filed shall retain jurisdiction over
7 the Parties to enforce the settlement until performance in full of the terms of the settlement.

8 **1.8 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 1,
10 2014.

11 **2. INJUNCTIVE RELIEF**

12 **2.1 Reformulation Standard**

13 "Reformulated Products" are defined as Products which yield less than or equal to 1,000
14 ppm of DEHP, when analyzed pursuant to Environmental Protection Agency testing
15 methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state
16 agencies for the purpose of determining phthalate content.

17 **2.2 Reformulation Commitment**

18 As of the Effective Date, All Access shall not manufacture, or cause to be manufactured,
19 Products for sale in the State of California unless they are Reformulated Products pursuant to
20 Section 2.1 above.

21 **3. PENALTIES PURSUANT TO HEALTH AND SAFETY CODE SECTION**
22 **25249.7(b)**

23 In settlement of all the claims referred to in this Consent Judgment, All Access shall pay a
24 total of \$14,000 in civil penalties in accordance with this Section. Each penalty payment will be
25 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d),
26 with 75% of the funds remitted to the California Office of Environmental Health Hazard
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1 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Held. Each penalty
2 payment shall be delivered to the addresses listed in Section 3.3 below. All Access shall be liable
3 for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are
4 not received two business days of the date they are due, if any.

5 **3.1 Initial Civil Penalty**

6 On or before the Effective date, All Access shall issue a check for its initial civil penalty
7 payment in the amount of \$4,000 to "Greenberg Traurig, LLP." Greenberg Traurig shall provide
8 The Chanler Group with written confirmation within five days of receipt that the funds have been
9 deposited in a trust account. Within two days of the date that this Consent Judgment is approved
10 by the Court, Greenberg Traurig shall issue two separate checks for the initial civil penalty
11 payment to "OEHHA" in the amount of \$3,000; and (b) "The Chanler Group in Trust for Held" in
12 the amount of \$1,000.

13 **3.2 Final Civil Penalty**

14 All Access shall pay a final civil penalty of \$10,000 on or before December 31, 2014.
15 The final civil penalty shall be waived in its entirety, however, if, no later than December 15,
16 2014, an officer of All Access provides Held with written certification that it, as of December 15,
17 2014, has manufactured and/or caused to be manufactured, for sale in California only
18 Reformulated Products and that it will continue to manufacture, distribute, sell and offer for sale
19 in California only Reformulated Products. Such certification must be received by The Chanler
20 Group on or before December 15, 2014. The certification in lieu of paying the final civil penalty
21 provided by this section is a material term, and time is of the essence. Unless waived, All Access
22 shall issue two separate checks for the final civil penalty payment to: (a) "OEHHA" in the
23 amount of \$7,500; and (b) "The Chanler Group in Trust for Held" in the amount of \$2,500.
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1 **3.3 Payment Procedures**

2 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

3 (a) All payments owed to Held and Held's counsel pursuant to
4 Sections 3.1 and 3.2 (unless waived), shall be delivered to the following payment
5 address:

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
 Berkeley, CA 94710

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
11 Sections 3.1 and 3.2 (unless waived), shall be delivered directly to OEHHA
12 (Memo line "Prop 65 Penalties") at the following addresses:

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010
18 Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

25 A copy of the checks payable to OEHHA shall be mailed to The Chanler
26 Group at the address set forth above in Section 3.3.1(a), as proof of payment to
27 OEHHA.

28 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, All Access
shall issue separate 1099 forms for each payment to Held, whose address and tax identification
number shall be furnished upon request after this Consent Judgment has been fully executed by the
Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The Parties acknowledge the Held and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Held then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
6 been finalized. The Parties reached an accord on the compensation due to Held and his counsel
7 under the private attorney general doctrine and principles codified at California Code of Civil
8 Procedure section 1021.5, for all work performed through the mutual execution of this agreement.
9 Under these legal principles, All Access shall reimburse Held's counsel for fees and costs
10 incurred as a result of investigating bringing this matter to All Access' attention, and negotiating
11 a settlement in the public interest. On or before the Effective Date, All Access shall issue a check
12 payable to "Greenberg Traurig, LLP" in the amount \$28,500 to be held in trust by Greenberg
13 Traurig, LLP for The Chanler Group. Greenberg Traurig, LLP shall provide The Chanler Group
14 with written confirmation within five days of receipt that the funds have been deposited in a trust
15 account. Within two business days of the date this Consent Judgment is approved by the Court,
16 Greenberg Traurig shall issue a check payable to "The Chanler Group" for delivery to the
17 following address:

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

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of All Access and Downstream Customers and Entities**

23 Held acting on his own behalf and in the public interest, releases All Access and its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
25 employees, attorneys and each entity to whom All Access directly or indirectly distributes or sells
26 Products including, but not limited to, downstream distributors, wholesalers, customers, retailers,
27 franchisees, cooperative members and licensees (collectively "Releasees"), from all claims for
28 violations of Proposition 65 through the Effective Date based on their failure to warn about

1 alleged exposures to the DEHP contained in the Products that were manufactured, distributed,
2 sold and/or offered for sale by All Access.

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
5 current agents, representatives, attorneys, successors and/or assignees, provides a release herein
6 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
7 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and
8 demands of All Access or the Releasees of any nature, character, or kind, whether known or
9 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposure to the
10 DEHP in the Products.

11 **5.2 All Access' Release of Held**

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

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved by the Court, including any
20 tentative ruling not challenged by either of the Parties, and shall be null and void if, for any
21 reason, it is not approved, including any tentative ruling not challenged by either of the Parties, by
22 the Court within one year after it has been fully executed by all Parties. In the event the Court
23 does not approve this Consent Judgment within one year, (a) this Consent Judgment and any and
24 all prior agreements between the Parties merged herein shall terminate and become null and void,
25 and the action shall revert to the status that existed prior to the execution date of this Consent
26 Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation,
27 documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect,
28 nor shall any such matter be admissible in evidence for any purpose in this action, or in any other

1 proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms
2 of the Consent Judgment and to resubmit it for approval.

3 **7. SEVERABILITY**

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

7 **8. GOVERNING LAW**

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

14 **9. NOTICES**

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

19 For All Access:

20 Anthony J. Cortez, Esq.
21 Greenberg Traurig, LLP
22 1201 K Street, Suite 1100
23 Sacramento, CA 95814

For Held:

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

24 Any Party, from time to time, may specify in writing to the other Party a change of
25 address to which all notices and other communications shall be sent.
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1 **10. COUNTERPARTS; SIGNATURES**

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

5 **11. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(f)**

6 Held agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f).

8 **12. MODIFICATION**

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

12 **13. AUTHORIZATION**

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

15
16 **AGREED TO:**

17 Date: July 30, 2014

18
19 By: 

Anthony E. Held, PH.D., P.E.

AGREED TO:

Date: July __, 2014

By: _____

All Access Apparel, Inc.

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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.

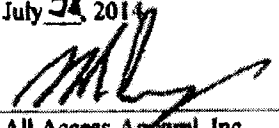
AGREED TO:

Date: July __, 2014

By: _____
Anthony E. Held, PH.D., P.E.

AGREED TO:

Date: July 28, 2014

By:  _____
All Access Apparel, Inc.