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Jennifer Henry, State Bar No. 208221
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
ALAMEDA COUNTY

OCT 24 2013

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

JORDANA COSMETICS CORPORATION, *et al.*,

Defendants.

Case No. RG13062042

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

Date: October 24, 2013
Time: 3:00 p.m.
Dept. 22
Judge: Hon. Robert McGuiness

Reservation No. R-1431653

RECEIVED
ALAMEDA COUNTY

AUG 29 2013

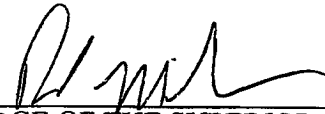
[Signature]

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

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

10
11 **IT IS SO ORDERED.**

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14 Dated: 10/24/13



JUDGE OF THE SUPERIOR COURT

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17 Robert D. McGuinness
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Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PhD., P.E.,
Plaintiff,
v.
JORDANA COSMETICS CORPORATION;
et al.,
Defendants.

Case No. RG 13662042
[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, Jordana Cosmetics Corporation ("Jordana"), with Held and Jordana each
5 individually referred to as a "Party" and collectively 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 Jordana 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, Health and Safety Code
13 section 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Jordana sold vinyl/PVC cosmetic bags containing di(2-ethylhexyl)phthalate
16 ("DEHP") without first providing clear and reasonable exposure warnings required by Proposition
17 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause
18 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC cosmetic bags
21 containing DEHP that are or were imported, manufactured, sold, or distributed for sale by Jordana in
22 California including, but not limited to, the *Jordana Eye Pencil – 4 Count, Item #61201 (#0 41065*
23 *61201 2)*, (collectively "Products").

24 **1.6 Notice of Violation**

25 On or about September 21, 2012, Held served Jordana and certain requisite public
26 enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") which
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1 alleged that Jordana was in violation of Proposition 65 for failing to warn its customers and
2 consumers in California that the Products exposed users to DEHP.

3 **1.7 Complaint**

4 On or about January 3, 2013, Held filed a complaint in the Superior Court for the County of
5 Alameda against Jordana and Does 1-150 et al., Case No. RG13662042 ("Complaint") for the alleged
6 violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

7 **1.8 No Admission**

8 Jordana denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has manufactured, imported, sold and
10 distributed in California, including the Products, have been, and are, in compliance with all laws.
11 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
12 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
13 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
14 law. This Section shall not, however, diminish or otherwise affect Jordana's obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 6,
23 2013.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulation Commitment**

26 Commencing on the Effective Date and continuing thereafter, except as described in section
27 2.3 below, Jordana shall only manufacture, sell or distribute for sale in California Products that are
28

1 reformulated ("Reformulated Products"). For purposes of this Consent Judgment, Reformulated
2 Products are Products that meet the Reformulation Standards of Section 2.2 below.

3 **2.2 Reformulation Standard**

4 Reformulated Products shall mean Products that contain a maximum of 1,000 parts per
5 million (0.1%) DEHP content in any accessible component (i.e., any component that may be touched
6 or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing
7 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies
8 for the purpose of determining DEHP content in a solid substance.

9 However Jordana may ship, sell or offer to be shipped for sale in California a Product that
10 does not meet the Reformulated Products standard, if the following conditions are met: (i) Jordana
11 has determined that no Reformulated Product is "reasonably commercially available"; (ii) the
12 Product is not primarily intended for use by individuals twelve years of age or younger; and (iii)
13 Jordana complies with the warning requirements set forth in Section 2.3 below for all Product
14 beginning on the Effective Date. For purposes of this Section "reasonable commercial availability"
15 shall include consideration of the following factors: availability and supply of a Reformulated
16 Product; cost of the Reformulated Product; performance characteristics of the Reformulated
17 Product, including but not limited to performance, safety, and stability.

18 **2.3 Product Warnings**

19 Commencing on the Effective Date, Jordana shall, for all Products other than Reformulated
20 Products sold in California by Jordana, provided the conditions in Section 2.2 are met, provide clear
21 and reasonable warnings as set forth below. Each warning shall be prominently placed with such
22 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
23 to be read and understood by an ordinary individual under customary conditions before purchase or
24 use. Each warning shall be provided in a manner such that the consumer or user understands to
25 which specific Product the warning applies, so as to minimize the risk of consumer confusion. For
26 Products containing DEHP, Jordana shall use the following warning language on all future Product
27 runs beginning on the Effective Date:

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2 **WARNING: This product contains DEHP, a phthalate chemical**
3 **known to the state of California to cause birth defects**
4 **and other reproductive harm.**

5 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

6 In settlement of all the claims referred to in this Consent Judgment, Jordana shall pay a total
7 of \$40,500.00 in civil penalties in accordance with this Section. Each penalty payment will be
8 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
9 the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA")
10 and the remaining 25% of the penalty remitted to Held, as follows:

11 **3.1 Initial Civil Penalty**

12 Jordana shall pay an initial civil penalty in the amount of \$7,500.00. These funds will be
13 placed in the client trust account for McBreen & Senior by September 15, 2013, and released to the
14 payees within two (2) business days after an order of court approval of the Consent Judgment and
15 Civil Penalty is obtained. The payees will be: (a) "OEHHA" in the amount of \$5,625.00; and (b)
16 "The Chanler Group in Trust for Anthony Held" in the amount of \$1,875.00. All penalty payments
17 shall be delivered to the addresses listed in Section 3.3 below.

18 **3.2 Final Civil Penalty**

19 Jordana shall pay a final civil penalty of \$33,000.00 on or before December 15, 2013. The
20 final civil penalty shall be waived in its entirety, however, if, no later than December 1, 2013, an
21 officer of Jordana provides Held with written certification that, as of the date of such certification and
22 continuing into the future, Jordana has met the reformulation standard specified in Section 2 above,
23 such that all Products manufactured, imported, distributed, sold and offered for sale in California by
24 Jordana after the Effective Date are Reformulated Products. Held must receive any such certification
25 on or before December 1, 2013. The certification in lieu of a final civil penalty payment provided by
26 this Section is a material term, and time is of the essence. Jordana shall issue two separate checks for
27 its final civil penalty payments to: (a) "OEHHA" in the amount of \$24,750.00; and (b) "The Chanler
28 Group in Trust for Anthony Held" in the amount of \$8,250.00.

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, pursuant to Sections 3.1 through 3.2, shall be
4 delivered to the following payment address:

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

10 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
11 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop
12 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 with a copy of the checks payable to OEHHA mailed to The Chanler
26 Group at the address set forth above in 3.3.1(a), as proof of payment to
27 OEHHA.

28 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Jordana 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.

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

2 The parties acknowledge that 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 expressed a
5 desire to resolve the fee and cost issue. The parties then attempted to (and did) reach an accord on
6 the compensation due to Held and his counsel under general contract principles and the private
7 attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work
8 performed through the mutual execution of this agreement. Jordana shall pay \$32,000.00 for fees and
9 costs incurred as a result of investigating, bringing this matter to Jordana's attention, and negotiating
10 a settlement in the public interest. Jordana shall issue a separate 1099 for fees and costs (EIN: 94-
11 3171522), shall make the check payable to "The Chanler Group" and shall deliver payment to the
12 address listed in Section 3.3.1(a) above. These funds will be placed in the client trust account for
13 McBreen & Senior by September 15, 2013, and released to The Chanler Group within two (2)
14 business days after an order of court approving the Consent Judgment and this fee is obtained.

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1 Held's Public Release of Proposition 65 Claims**

17 Held, acting on his own behalf and in the public interest, releases Jordana and its parents,
18 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
19 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
20 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
21 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any
22 violations arising under Proposition 65 for unwarned exposures to DEHP contained in the Products
23 sold by Jordana prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
24 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
25 DEHP from the Products sold by Jordana before the Effective Date, as set forth in the Notice.

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1 **5.2 Held's Individual Release of Claims**

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

8 **5.3 Jordana's Release of Held**

9 Jordana, on its own behalf, and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
11 attorneys and other representatives, for any and all actions taken or statements made by Held and
12 his attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

14 **6. COURT APPROVAL**

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

18 **7. SEVERABILITY**

19 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
20 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
21 adversely affected.

22 **8. GOVERNING LAW**

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

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

3 **9. 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 Jordana:

8 Laurie Minc, President
9 Jordana Cosmetics Corporation
10 2035 East 49th Street
11 Vernon, CA 90058

12 with a copy to:

13 David A. Senior, Esq.
14 McBreen & Senior
15 1900 Avenue of the Stars, 11th Floor
16 Los Angeles, CA 90067

17 For Held:

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

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

25 **10. 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.

11. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code

1 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
2 furtherance of obtaining such approval, Held and Jordana agree to mutually employ their best efforts,
3 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
4 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
5 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, and
6 supporting the motion for judicial approval.

7 **12. MODIFICATION**

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

11 **13. AUTHORIZATION**

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

14 **AGREED TO:**

AGREED TO:

15
16 Date: August 16, 2013

Date: _____

17
18 By: *Anthony E. Held*
19 ANTHONY E. HELD, PhD., P.E.

By: _____
Laurie Minc, President
JORDANA COSMETICS CORPORATION

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14 **AGREED TO:**

AGREED TO:

15

16 Date: _____

Date: 8-27-13

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18 By: _____
ANTHONY E. HELD, PhD., P.E.

By: Laurie Minc
Laurie Minc, President
JORDANA COSMETICS CORPORATION

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