

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

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, PH.D., P.E.

ENDORSED
FILED
San Francisco County Superior Court

AUG 07 2014

CLERK OF THE COURT
BY: MA. BENIGNA D. GOODMAN
Deputy Clerk

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

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

Plaintiff,

v.

BATTENFELD TECHNOLOGIES, INC., *et*
al.,

Defendants.

Case No. CGC-13-535070

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

Date: August 7, 2014
Time: 9:30 a.m.
Dept. 302
Judge: Hon. Marla J. Miller

Reservation No. 061014-09

1 Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Battenfeld Technologies,
2 Inc., having agreed through their respective counsel that judgment be entered pursuant to
3 the terms of their settlement agreement in the form of a consent judgment, and following
4 this Court's issuance of an order approving their Proposition 65 settlement and Consent
5 Judgment,

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

11 **IT IS SO ORDERED.**

12
13
14 Dated: _____ AUG 07 2014

MARLA J. MILLER

JUDGE OF THE SUPERIOR COURT

MARLA J. MILLER

15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

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

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, PH.D., P.E.

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

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
BATTENFELD TECHNOLOGIES, INC.; *et al.*,
Defendants.

Case No.: CGC-13-535070
[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, Ph.D., P.E. ("Held")
4 and Battenfeld Technologies, Inc. ("Battenfeld"), with Held and Battenfeld each individually referred
5 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, who has brought this action and is settling this action "in the public
10 interest" pursuant to California Health and Safety Code § 25249.7(d) and Title 11, California Code of
11 Regulations, §§ 3000 *et seq.*

12 **1.3 Defendant**

13 Solely for purposes of this Consent Judgment, Battenfeld employs ten or more persons and is
14 a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic
15 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

16 **1.4 General Allegations**

17 Held alleges that Battenfeld manufactures, imports, sells, or distributes for sale in California,
18 bags with vinyl/PVC interiors that contain lead without first providing the exposure warning required
19 by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of
20 California to cause birth defects or other reproductive harm.

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are bags with vinyl/PVC interiors
23 manufactured, imported, sold, or distributed for sale in California, either directly or indirectly, by or
24 on behalf of Battenfeld including, but not limited to, the *Caldwell Shooting Supplies Shot Carrier*
25 *Bag Four Bag Set, PN# 533117 (UPC #6 61120 33117 9)* (collectively "Covered Products").

26 **1.6 Notice of Violation**

27 On or about July 24, 2013, Held served Battenfeld, a retailer, and certain requisite public
28 enforcement agencies with a 60-Day Notice of Violation ("Notice") alleging that Battenfeld was in

1 violation of Proposition 65 for causing consumer and occupational exposures to lead in California
2 without clear and reasonable warnings as required by Proposition 65.

3 **1.7 Complaint**

4 On October 25, 2013, Held filed the instant action ("Complaint"), naming Battenfeld and
5 others as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice. This Consent Judgment is intended to achieve a full and final resolution of all
7 claims that were made or could have been made in the Complaint or that arise from the Notice.

8 **1.8 No Admission**

9 Battenfeld denies the material, factual, and legal allegations contained in the Notice and
10 Complaint, and it maintains that all of the Covered Products that it has sold and distributed for sale in
11 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
12 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
13 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
14 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,
15 nor shall the existence of this Consent Judgment or anything involving it be relevant to or admissible
16 in any legal proceeding or dispute other than one to enforce or modify this Consent Judgment. This
17 Section shall not, however, diminish or otherwise affect Battenfeld's obligations, responsibilities, and
18 duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Battenfeld as to the allegations in the Complaint, that venue is proper in the County
22 of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" means the date that the
26 Court grants the motion for approval of this Consent Judgment contemplated by Section 10.

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF; REFORMULATION AND WARNINGS**

2 **2.1 Reformulated Products**

3 Commencing July 1, 2014, and continuing thereafter, Battenfeld shall only purchase for sale
4 or manufacture for sale in California Covered Products that are Reformulated Products or products
5 sold with a clear and reasonable warning pursuant to Section 2.2. For purposes of this Consent
6 Judgment, Reformulated Products are Covered Products that contain a maximum of 100 parts per
7 million lead by weight in any accessible component (i.e., any part, feature or aspect of a Product that
8 is likely to be touched during normal use) when analyzed pursuant to EPA testing methodologies
9 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose
10 of determining lead content in a solid substance, and suitable for the material being tested.

11 **2.2 Clear and Reasonable Warnings**

12 For all Products that are not Reformulated Products, Battenfeld agrees to provide a clear and
13 reasonable consumer warning in accordance with this Section. Battenfeld agrees that any warning
14 utilized will be prominently placed with such conspicuousness as compared with other words,
15 statements, designs, or devices as to render it likely to be read and understood by an ordinary
16 individual under customary conditions before purchase or use, consistent with 27 Cal. Code Regs. §
17 25603.1(c) as of the date this Consent Judgment is executed. For purposes of this Consent Judgment,
18 a clear and reasonable warning for lead in Covered Products shall consist of a warning affixed to the
19 packaging, label, tag or product of a Covered Product sold in California containing the following
20 language:

21 **WARNING: This product contains lead, a chemical known to**
22 **the state of California to cause cancer, birth**
23 **defects or other reproductive harm.**

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalty Payments**

26 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
27 this Consent Judgment, Battenfeld shall pay \$4,000 in civil penalties. Each civil penalty payment
28 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-

1 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
2 Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held.

3 **3.1.1 Initial Civil Penalty**

4 Within 10 days of the Effective Date, Battenfeld shall make an initial civil penalty
5 payment of \$1,500. Battenfeld shall provide its payment in two checks for the following amounts
6 made payable to: (a) "OEHHA" in the amount of \$1,125; and (b) "The Chanler Group in Trust for
7 Anthony E. Held" in the amount of \$375.

8 **3.1.2 Final Civil Penalty**

9 On September 1, 2014, Battenfeld shall make a final civil penalty payment of \$2,500.
10 Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil
11 penalty payment shall be waived in its entirety if, no later than August 15, 2014, an officer of
12 Battenfeld provides Held with written certification that all of the Covered Products purchased for sale
13 or manufactured for sale by Battenfeld in California as of the date of such certification are
14 Reformulated Products as defined by Section 2.1, and that Battenfeld will continue to offer only
15 Reformulated Products in California in the future. The option to certify reformulation in lieu of
16 making the final civil penalty payment required by this Section is a material term, and with regard to
17 such term, time is of the essence.

18 **3.2 Reimbursement of Fees and Costs**

19 The parties acknowledge that Held and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, Battenfeld expressed a desire to resolve Held's fees and
23 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and
24 his counsel under the private attorney general doctrine codified at California Code of Civil Procedure
25 section 1021.5. Within 10 days of the Effective Date, Battenfeld shall pay \$25,000 for the fees and
26 costs incurred by Held investigating, bringing this matter to the Defendants' attention, negotiating a
27 settlement in the public interest, obtaining the Court's approval of this Consent Judgment and
28

1 otherwise incurred (and yet to be incurred) relative to the Notice, this action and this Consent
2 Judgment.

3 **3.3 Payment Procedures**

4 Payments made under this Consent Judgment shall be delivered as follows:

5 **3.3.1 Payment Addresses**

6 (a) All payments and tax documentation for Held and his counsel shall be
7 delivered to:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

13 (b) All payments and tax documentation for OEHHA shall be delivered directly
14 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as
15 appropriate:

16 For United States Postal Service Delivery:

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

22 For Non-United States Postal Service Delivery or Courier:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 1001 I Street
27 Sacramento, CA 95812-4010

28 **3.3.2 Proof of Payment to OEHHA**

Battenfeld shall provide Held's counsel with a copy of the checks sent to OEHHA
enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

3.3.3 Required Tax Documentation

Battenfeld agrees to provide an IRS 1099 form for its payments under this Consent
Judgment to each of the following payees: (a) "Office of Environmental Health Hazard Assessment"
(EIN: 68-0284486); (b) "Anthony E. Held," whose address and tax identification number shall be

1 furnished after this Consent Judgment is fully executed by the Parties; and (c) "The Chanler Group"
2 (EIN: 94-3171522).

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 Held's Public Release of Proposition 65 Claims**

5 Held, acting on his own behalf and in the public interest, releases Battenfeld and its parents,
6 subsidiaries, affiliated entities under common ownership or control, directors, officers, members,
7 partners, employees, licensors, licensees, franchisors, franchisees and attorneys ("Releasees") and
8 each entity to whom it directly or indirectly distributes or sells or has sold Covered Products,
9 including but not limited to its downstream distributors, wholesalers, customers, retailers (including,
10 but not exclusively, Big 5 Sporting Goods Corporation), and all of their parents, subsidiaries,
11 affiliated entities under common ownership or control, directors, officers, members, partners,
12 employees, licensors, licensees, franchisors, franchisees and attorneys ("Downstream Releasees")
13 for any violations arising under Proposition 65 for unwarned exposures to lead from the Covered
14 Products manufactured, imported, sold, or distributed for sale in California, either directly or
15 indirectly, by or on behalf of Battenfeld prior to the Effective Date, as set forth in the Notice.
16 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
17 with respect to lead in Covered Products.

18 **4.2 Held's Individual Release of Claims**

19 Held, in his individual capacity only and *not* in his representative capacity, also provides a full
20 release to Battenfeld, Releasees, and Downstream Releasees which shall be effective as a full and
21 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
22 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
23 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
24 exposures to lead in the Covered Products sold or distributed for sale by Battenfeld before the
25 Effective Date.

26 **4.5 Battenfeld's Release of Held**

27 Battenfeld, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Held and his

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

4 **4.6 No Other Known Claims or Violations**

5 Held and Held's counsel affirm that they are not presently aware of any actual or alleged
6 violations of Proposition 65 by Battenfeld or for which Battenfeld bears legal responsibility other
7 than those that are fully resolved by this Consent Judgment, and as to Big 5 Sporting Goods
8 Corporation that they are not presently aware of any actual or alleged violations of Proposition 65
9 relative to Covered Products by Big 5 Sporting Goods Corporation or for which Big 5 Sporting
10 Goods Corporation bears legal responsibility other than those that are fully resolved by this Consent
11 Judgment. This Paragraph does not, however, provide a release for any unknown, actual or alleged
12 violations involving other substances and product categories, if any, nor does it limit the scope of the
13 release provided by Paragraphs 4.1 and 4.2 for Covered Products

14 **5. 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. If this Consent Judgment is not approved by the Court, (a)
18 this Consent Judgment and any and all prior agreements between the Parties merged herein shall
19 terminate and become null and void, and the action shall revert to the status that existed prior to the
20 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof,
21 or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions,
22 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this
23 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether
24 to modify the terms of the Consent Judgment and to resubmit it for approval.

25 **6. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply only within the State of California. In the event that Proposition 65 is repealed, preempted,
28 or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then

1 Battenfeld may provide written notice to Held of any asserted change in the law, and shall have no
2 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
4 Battenfeld from any obligation to comply with any pertinent state or federal toxics control laws.

5 **7. NOTICE**

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

9 For Battenfeld:

10 Jim Gianladis, President
11 Battenfeld Technologies, Inc.
12 5885 West Van Horn Tavern Road
13 Columbia, MO 65203

13 with a copy to:

14 Paul S. Rosenlund, Esq.
15 Duane Morris LLP
16 Spear Tower, One Market Plaza, Suite 2200
17 San Francisco, CA 94105

16 For Held:

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

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

22 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **9. POST EXECUTION ACTIVITIES**

27 Held shall comply with the reporting form requirements referenced in Health and Safety Code
28 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 Battenfeld agree to mutually employ their
3 reasonable best efforts, and that of their counsel, to support the entry of this agreement as judgment,
4 and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section,
5 "best efforts" shall include, at a minimum, cooperating with the drafting and filing of the necessary
6 moving papers, and supporting the motion for judicial approval.

7 **10. ENFORCEMENT OF CONSENT JUDGMENT**

8 Any Party may, by motion, application for an order to show cause before the San Francisco
9 Superior Court, or any other appropriate action, enforce the terms and conditions contained in this
10 Consent Judgment. A Party may file such a motion, action or application only after that Party first
11 provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of this
12 Consent Judgment, with reasonable evidence to support the alleged violation, and attempts to resolve
13 such Party's failure to comply in an open and good faith manner for a period of no less than 30 days.

14 Reasonable evidence to support any alleged later violation shall be based at least in part upon
15 total acid digest testing performed by an independent accredited laboratory. Wipe, swipe, x-ray
16 fluorescence (XRF), and swab testing are not by themselves sufficient to support a Notice of
17 Violation or subsequent enforcement measures, although any such testing may be used as additional
18 support for a Notice or other measures.

19 **11. DISMISSAL OF BIG 5 SPORTING GOODS CORPORATION**

20 Within ten days of an order entered by the Court granting approval of this Consent Judgment,
21 Held shall file a Request for Dismissal with prejudice as to defendant Big 5 Sporting Goods
22 Corporation and all DOE defendants.

23 **12. MODIFICATION**

24 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
25 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
26 Party, and the entry of a modified consent judgment by the Court.

27 ///

28 ///

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

13. AUTHORIZATION

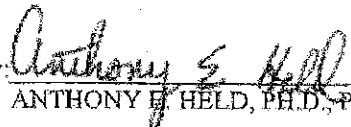
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

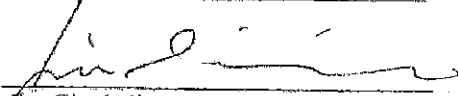
AGREED TO:

AGREED TO:

Date: April 9, 2014

Date: 4/7/14

By: 
ANTHONY E. HELD, P.H.D., P.E.

By: 
Jim Gianladis, President
BATTENFELD TECHNOLOGIES, INC.