

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

Troy C. Bailey, State Bar No. 277424
Ryan C. Oca, State Bar No. 303113
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.

FILED

JUL 27 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

NAVITOR, INC.; TAYLOR
CORPORATION; and DOES 1-150,
inclusive,

Defendants.

Case No. CIV 1601536

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

Date: JUL 27 2016
Time: 1:30pm
Dept.: B
Judge: Hon. Roy O. Chernus

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

In the above entitled action, plaintiff Anthony E. Held, PH.D, P.E. and Defendant Navitor Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] consent judgment (“Consent Judgment”), and following this Court’s issuance of an order approving their Proposition 65 settlement and Consent Judgment on _____ 2016.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and 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 A. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: JUL 27 2016

 ROY CHERNUS
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Josh Voorhees, State Bar No. 241436
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION
10

11
12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 TAYLOR CORPORATION; NAVITOR,
INC.; and DOES 1-150, inclusive,

16 Defendants.
17

Case No. CIV 1601536

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Dr. Held") and defendants Navitor, Inc. ("Navitor"), with Dr. Held and Navitor each referred
5 to individually as a "Party" and collectively as the "Parties."

6 **1.2 Anthony E. Held, Ph.D., P.E.**

7 Dr. Held is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Navitor, Inc.**

11 Navitor 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 and
13 Safety Code section 25249.5 *et seq* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that Navitor manufactures, imports, sells and/or distributes for sale in
16 California, products containing di(2-ethylhexyl)phthalate ("DEHP"), and that it does so without
17 providing the health hazard warning that Dr. Held alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are vinyl/PVC tape and stickers containing
20 DEHP including, but not limited to, *Cosco Black "i" Black Gloss Art Tape, #098075, UPC #0*
21 *39956 98075 3* and *Creative Start Indoor Outdoor Letters & Numbers 2 in. Black Helvetica, Item*
22 *#098139, UPC #0 39956 98139 2*, that are manufactured, distributed and/or sold by Navitor in
23 California ("Products").

24 **1.6 Notice of Violation**

25 On April 29, 2015, Dr. Held served Navitor, Navitor's parent company, Taylor Corporation,
26 and the requisite public enforcement agencies with a 60-Day Notice of Violation (the "Notice"),
27 alleging that Navitor violated Proposition 65 when it failed to warn its customers and consumers in
28 California that the Products expose users to DEHP. To the best of the Parties' knowledge, no

1 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
2 forth in the Notice.

3 **1.7 Complaint**

4 On April 28, 2016, Dr. Held filed a complaint in the Superior Court in and for the County of
5 Marin against Navitor and DOES 1-150, alleging violations of California Health & Safety Code
6 § 25249.6, based on exposures to DEHP contained in certain vinyl/PVC tape and stickers sold by
7 Navitor in the State of California, *Held v. Navitor, Inc., et al.*, Case No. CIV1601536 (the
8 “Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Navitor as to the allegations contained in the Complaint, that venue is proper in the
21 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
25 the Court grants the motion for approval of this Consent Judgment, including any unopposed
26 Tentative Ruling.

1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
6 federal or state government agencies for the purpose of determining DEHP content in a solid
7 substance.

8 **2.2 Reformulation Commitment**

9 As of the Effective Date all Products manufactured, imported, distributed, sold and/or
10 offered for sale in the State of California by Navitor shall be Products that qualify as Reformulated
11 Products as defined in Section 2.1.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

14 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
15 claims referred to in this Consent Judgment, Navitor shall pay \$12,000 in civil penalties in
16 accordance with this Section. The penalty payment will be allocated in accordance with California
17 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
18 Office of Environmental Health Hazard Assessment (“OEHHA”) by Dr. Held. Navitor shall
19 provide its payment in a single check made payable to “Anthony E. Held, Client Trust Account” to
20 be delivered to the address provided in Section 3.3 below, within two (2) business days of the
21 Effective Date. Dr. Held’s counsel shall be responsible for remitting Navitor’s penalty payment(s)
22 under this Consent Judgment to OEHHA.

23 **3.2 Reimbursement of Attorneys’ Fees and Costs**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
27 the other settlement terms had been finalized, Navitor expressed a desire to resolve Dr. Held’s fees
28 and costs. The Parties then negotiated a resolution of the compensation due to Dr. Held and his

1 counsel under general contract principles and the private attorney general doctrine codified at
2 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
3 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
4 on appeal, if any, Navitor shall reimburse Dr. Held and his counsel \$28,500. Navitor's payment
5 shall be delivered to the address in Section 3.3 in the form of a check payable to "The Chanler
6 Group" within two (2) business days of the Effective Date. The reimbursement shall cover all fees
7 and costs incurred by Dr. Held investigating, bringing this matter to Navitor's attention, litigating,
8 and negotiating a settlement of the matter in the public interest.

9 **3.3 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to the following
11 address:

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

17 **3.3.1 Required Tax Information** Navitor agrees to provide appropriate 1099
18 form documentation for the civil penalties paid to OEHHA. The form shall be transmitted to the
19 "Office of Environmental Health Hazard Assessment," 1001 I Street, Sacramento, CA 95814
20 (EIN: 68-0284486). For the civil penalties paid to Dr. Held, Navitor agrees to issue a 1099 form to
21 "Anthony E. Held," whose address and tax identification number shall be furnished after this
22 Consent Judgment is fully executed by the Parties. For the reimbursement of fees and costs
23 pursuant to section 3.2, Navitor shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-
24 3171522) to the address listed in section 3.3 above.

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Dr. Held's Release of Proposition 65 Claims**

27 Dr. Held, acting on his own behalf and in the public interest, releases Navitor and its parents
28 (including defendant Taylor Corporation), subsidiaries, affiliated entities under common ownership,
directors, officers, employees, and attorneys, and (only for Products distributed to Navitor by SVI
Global prior to the Effective Date) SVI Global, ("Releasees") and each entity to whom Navitor

1 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
2 distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and
3 licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned
4 exposures to DEHP from the Products manufactured, imported, distributed or sold by Navitor prior
5 to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
6 Judgment constitutes compliance with Proposition 65 by Navitor with respect to the alleged or
7 actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for
8 sale by Navitor after the Effective Date.

9 **4.2 Dr. Held’s Individual Release of Claims**

10 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
11 a release to Navitor, Releasees, and Downstream Releasees which shall be effective as a full and
12 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
13 attorneys’ fees, damages, losses, claims, liabilities and demands of Dr. Held of any nature, character
14 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
15 exposures to DEHP in Products manufactured, imported, distributed or sold by Navitor before the
16 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
17 Proposition 65 with respect to exposure to DEHP from the Products.

18 **4.3 Navitor’s Release of Dr. Held**

19 Navitor, on its own behalf and on behalf of its past and current agents, representatives,
20 attorneys, successors and/or assignees, hereby waive any and all claims against Dr. Held and his
21 attorneys and other representatives, for any and all actions taken or statements made (or those that
22 could have been taken or made) by Dr. Held and his attorneys and other representatives in the
23 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
24 respect to the Products up through the Effective Date.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
28 after it has been fully executed by all Parties. Dr. Held and Navitor agree to support the entry of

1 this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
2 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
3 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
4 motion Dr. Held shall draft and file and Navitor shall support, appearing at the hearing if so
5 requested. If any third-party objection to the motion is filed, Dr. Held and Navitor agree to work
6 together to file a reply and appear at any hearing. This provision is a material component of the
7 Consent Judgment and shall be treated as such in the event of a breach.

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Navitor
16 may provide Dr. Held with written notice of any asserted change in the law, and with the exception
17 of Sections 3.1 and 3.2 above, shall have no further obligations pursuant to this Consent Judgment,
18 with respect to, and to the extent that, the Products are so affected. Nothing in this Consent
19 Judgment shall be interpreted to relieve Navitor from its obligation to comply with any pertinent
20 state or federal law or regulation.

21 **8. NOTICE**

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

26
27
28

1 To Navitor:
2 Guy Wilson, Esq.
3 Law Offices of Guy Wilson
4 509 Orchard Street
5 Santa Rosa, CA 95404

To Dr. Held:
Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

5 With a copy to:
6 Navitor, Inc.
7 Attn. General Counsel
8 1725 Roe Crest Drive
9 North Mankato, MN 56003

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

10 9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

11 This Consent Judgment may be executed in counterparts and by facsimile or portable
12 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
13 taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as
14 valid as the original.

15 10. COMPLIANCE WITH REPORTING REQUIREMENTS

16 Dr. Held and his counsel agree to comply with the reporting form requirements referenced
17 in California Health and Safety Code section 25249.7(f).

18 11. MODIFICATION

19 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
20 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
21 any party and the entry of a modified Consent Judgment by the Court thereon.
22
23
24
25
26
27
28

1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

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

AGREED TO:

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

Dated: 6/13/2016

AGREED TO:

NAVITOR, INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

1 12. AUTHORIZATION

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5
6 AGREED TO:
7
8 ANTHONY E. HELD, P.H.D., P.E.

9 Dated:

AGREED TO:
Chad Heminger
NAVITOR, INC.
By: Chad Heminger
(Print Name)
Its: VP Finance
(Title)
Dated: 06/13/10

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28