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Attorneys for Defendants Clicks Worldwide, LLC,
Fashion Accessory Bazaar, LLC, and FAB/Starpoint

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

ANTHONY HELD, Ph.D., P.E.,

Plaintiff,

v.

CLICKS WORLDWIDE, LLC; and DOES 1
through 150, inclusive,

Defendants.

Case No. RG 07350985

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Clicks Worldwide, LLC**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and Clicks Worldwide, LLC, Fashion Accessory Bazaar, LLC, and
5 Fab/Starpoint (collectively “Clicks” or “Defendant”), with Plaintiff and Defendant collectively
6 referred to as the “Parties.”

7 **1.2 Plaintiff**

8 Dr. Held is an individual residing in the State of California who seeks to promote awareness
9 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Defendant**

12 Clicks employs ten or more persons who are each a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §25249.6 *et seq.* (Proposition 65).

15 **1.4 General Allegations**

16 Dr. Held alleges that Clicks has manufactured, distributed and/or sold children’s watches
17 containing phthalates, including di(2-ethylhexyl)phthalate (hereinafter the “Listed Chemical” or
18 “DEHP”), without Proposition 65 warnings. The Listed Chemical is on the Proposition 65 list as
19 known to cause cancer, birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: children’s
22 watches containing Listed Chemical, such as, but not limited to, The Amazing Spider-Man Digital
23 Watch, #4301115 (#8 15980 03345 6). All such children’s watches containing the Listed Chemical
24 are referred to hereinafter as the “Products”.

25 **1.6 Notice of Violation**

26 On August 2, 2007, Dr. Held served Clicks and various public enforcement agencies with a
27 document entitled “60-Day Notice of Violation” (the “Notice”) that provided Clicks and public
28

1 enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for failing
2 to warn consumers that the Products that Clicks sold exposed users in California to the Listed
3 Chemical. To the best of the parties' knowledge, no public enforcer has diligently prosecuted the
4 allegations set forth in the Notice.

5 **1.7 Complaint**

6 On October 12, 2007, Dr. Held, acting in the interest of the general public in California,
7 filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of
8 Alameda against Clicks and Does 1 through 150, alleging violations of California Health & Safety
9 Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products
10 sold by Clicks.

11 **1.8 No Admission**

12 Clicks denies the material, factual and legal allegations contained in Dr. Held's Notice and
13 Complaint and maintains that all Products that they have sold and distributed in California have
14 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
15 an admission by Clicks of any fact, finding, issue of law, or violation of law, nor shall compliance
16 with this Consent Judgment constitute or be construed as an admission by Clicks of any fact,
17 finding, conclusion, issue of law, or violation of law, such being specifically denied by Clicks.
18 However, this section shall not diminish or otherwise affect Clicks' obligations, responsibilities, and
19 duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 31,
27 2008.

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

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, Clicks shall not sell, ship, or offer to be shipped for sale
4 in California any Product unless such Product is sold or shipped with one of the clear and
5 reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to
6 Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

7 Each warning shall be prominently placed with such conspicuousness as compared with
8 other words, statements, designs, or devices as to render it likely to be read and understood by an
9 ordinary individual under customary conditions before purchase or use. Each warning shall be
10 provided in a manner such that the consumer or user understands to which *specific* Product the
11 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
12 arise.

13 **(a) Retail Store Sales.**

14 **(i) Product Labeling.** Clicks may affix a warning to the packaging,
15 labeling, or directly on each Product sold in retail outlets in California by Clicks or its agents, that
16 states:

17 **WARNING:** This product contains DEHP, a chemical known
18 to the State of California to cause birth defects
19 and other reproductive harm.

20 **(ii) Point-of-Sale Warnings.** Alternatively, Clicks may provide warning
21 signs in the form below to its customers in California with instructions to post the warnings in close
22 proximity to the point of display of the Products.

23 **WARNING:** This product contains DEHP, a chemical known
24 to the State of California to cause birth defects
25 and other reproductive harm.

26 Where more than one Product is sold in proximity to other like items or to those that do not
27 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement
28

1 **WARNING:** Certain products identified with this symbol
2 ▼ and offered for sale in this catalog contain
3 DEHP, a chemical known to the State of
 California to cause birth defects and other
 reproductive harm.

4 The designated symbol must appear on the same page and in close proximity to the display
5 and/or description of the Product. On each page where the designated symbol appears, Clicks must
6 provide a header or footer directing the consumer to the warning language and definition of the
7 designated symbol.

8 If Clicks elects to provide warnings in the mail order catalog, then the warnings must be
9 included in all catalogs offering to sell one or more Products printed after the Effective Date.

10 **(ii) Internet Website Warning.** A warning may be given in conjunction
11 with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on
12 which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on
13 the same page as the price for any Product; or (d) on one or more web pages displayed to a
14 purchaser during the checkout process. The following warning statement shall be used and shall
15 appear in any of the above instances adjacent to or immediately following the display, description,
16 or price of the Product for which it is given in the same type size or larger than the Product
17 description text:

18 **WARNING:** This product contain DEHP, a chemical known
19 to the State of California to cause birth defects
 and other reproductive harm.

20 Alternatively, the designated symbol may appear adjacent to or immediately following the
21 display, description, or price of the Product for which a warning is being given, provided that the
22 following warning statement also appears elsewhere on the same web page, as follows:

23 **WARNING:** Products identified on this page with the
24 following symbol contain DEHP, a chemical
25 known to the State of California to cause
 birth defects and other reproductive harm:
 ▼.

1 **2.2 Exceptions To Warning Requirements**

2 The warning requirements set forth in Section 2.1 shall not apply to:

- 3 (i) Any Product manufactured by Clicks prior to August 31, 2008; or
4 (ii) Reformulated Products (as defined in Section 2.3 below).

5 **2.3 Reformulation Standards**

6 Reformulated Products are defined as those Products containing less than or equal to 1,000
7 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to Section 2.1
8 above shall not be required for Reformulated Products.

9 **2.4 Past and Future Reformulation Steps and Discontinuation of Spiderman Watch**

10 Clicks hereby commits that, effective as of August 31, 2008, one hundred percent (100%) of
11 the Products manufactured for sale in California shall qualify as Reformulated Products. Clicks
12 also represents that, as a direct result of the Notice issued on August 2, 2007, it began to
13 immediately implement a process for the reformulation of the Products. In addition, as a result of
14 the Notice, the company discontinued the sale of *The Amazing Spider-Man Digital Watch*,
15 #4301115 as of December 31, 2007.

16 **3. MONETARY PAYMENTS**

17 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment, Clicks shall pay \$14,000
19 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192,
20 with 75% of these funds remitted to the State-of California’s Office of Environmental Health
21 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as
22 provided by California Health & Safety Code §25249.12(d). Clicks shall issue two separate checks
23 for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust For
24 OEHHA” in the amount of \$10,500, representing 75% of the total penalty; and (b) one check to
25 “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$3,500, representing 25% of the
26 total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box
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1 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall
2 be provided five calendar days before the payment is due.

3 Payment shall be delivered to Dr. Held's counsel on or before September 30, 2008, at the
4 following address:

5 HIRST & CHANLER LLP
6 Attn: Proposition 65 Controller
7 455 Capitol Mall, Suite 605
8 Sacramento, CA 95814

9 The sums paid pursuant to this section 3.1 shall be held by Hirst & Chanler in its established client
10 trust account until entry of this Consent Judgment by the Court.

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

12 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 this fee issue to be resolved after the material terms of the Consent Judgment had been settled.
15 Clicks then expressed a desire to resolve the fee and cost issue shortly after the other settlement
16 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
17 compensation due to Dr. Held and his counsel under general contract principles and the private
18 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
19 work performed through the mutual execution of this agreement. Clicks shall reimburse Dr. Held
20 and his counsel a total of \$54,000 for fees and costs incurred as a result of investigating, bringing
21 this matter to Clicks' attention, and litigating and negotiating a settlement in the public interest.
22 This figure includes Dr. Held's future fees and costs including attorneys fees to be incurred in
23 seeking judicial approval of this Consent Judgment as well as any other legal work performed after
24 the execution of this Consent Judgment incurred in an effort to obtain finality of the case. This
25 fixed fee, which Clicks acknowledges is significantly less than its own legal fees and costs already
26 billed to it by defense counsel in this matter, does not include any attorney fees that Dr. Held may
27 incur in responding to any motion to modify this Consent Judgment brought by Clicks. Clicks shall
28 issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to

1 “Hirst & Chanler LLP” and to be delivered on or before September 30, 2008, to the following
2 address:

3 HIRST & CHANLER LLP
4 Attn: Proposition 65 Controller
455 Capitol Mall, Suite 605
5 Sacramento, CA 95814

6 The sums paid pursuant to this section 4.1 shall be held by Hirst & Chanler in its established
7 client trust account until entry of this Consent Judgment by the Court.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held’s Release of Clicks**

10 In further consideration of the promises and agreements herein contained, and for the
11 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
12 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
13 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
14 of legal action and releases all claims, including, without limitation, all actions, and causes of
15 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
16 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees)
17 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”),
18 against Defendants and each of their wholesalers, licensors, licensees, auctioneers, retailers,
19 distributors, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
20 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
21 shareholders, agents, and employees, and sister and parent entities (collectively “Releasees”) that
22 arise under Proposition 65, as such claims relate to Defendants’ alleged failure to warn about
23 exposures to the Listed Chemical contained in the Products.

24 Dr. Held in his individual capacity and *not* his representative capacity hereby releases all
25 claims which he now has or may have in the future against Clicks, irrespective of the subject
26 matter, of all character, kind and nature, whether said claims are known or unknown or are
27 suspected or unsuspected and Dr. Held expressly waives any and all rights and benefits which he
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1 now has, or in the future may have, under California Civil Code Section 1542, which provides as
2 follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
5 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
6 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
7 DEBTOR.

8 It is expressly agreed and understood that the general release by Dr. Held, in his individual
9 capacity only, of Clicks is a material consideration of Click's willingness and decision to enter into
10 this Consent Judgment.

11 **5.2 Clicks' Release of Dr. Held**

12 Clicks waives any and all claims against Dr. Held, his attorneys, and other representatives
13 for any and all actions taken by Dr. Held and his attorneys and other representatives, whether in the
14 course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in
15 this matter, and/or with respect to the Products.

16 **6. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
19 after it has been fully executed by all parties. If the Court does not approve the Consent Judgment,
20 the parties shall meet and confer as to (and jointly agree on) whether to modify the language or
21 appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case shall
22 proceed in its normal course on the Court's calendar. In the event that this Consent Judgment is
23 entered by the Court and subsequently overturned by any appellate court or the motion to approve is
24 not ultimately granted, any monies that have been provided to Plaintiff, or his counsel pursuant to
25 Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision
26 becoming final. If the Court's approval is ultimately overturned by an appellate court, the parties
27 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
28 Judgment. If the parties do not jointly agree on a course of action to take, then the case shall
proceed in its normal course on the trial court's calendar.

1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

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

12 **9. NOTICES**

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

17 To Clicks:

18 Steve Russo, President
19 CLICKS WORLDWIDE, LLC
20 15 West 34th Street
21 New York, NY 10001

22 With copies to:

23 Malcolm C. Weiss, Esq.
24 HUNTON & WILLIAMS LLP
25 550 South Hope Street, Suite 2000
26 Los Angeles, California 90071

27 and

28 Mike Hassan, Esq.
 WACHTEL & MASYSR LLP
 110 East 59th Street
 New York, New York 10022

1 To Dr. Held:

2 Proposition 65 Coordinator
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

7 Any party, from time to time, may specify in writing to the other party a change of address
8 to which all notices and other communications shall be sent. Should Dr. Held become aware of any
9 children's watches manufactured, distributed or sold by Clicks in California that Dr. Held believes
10 violates Section 2.4 of this Consent Judgment, Dr. Held agrees to provide Clicks with written notice
11 which identifies the products at issue by model and style number and shall include relevant test data
12 showing the presence of DEHP. Within 30 days following Clicks' receipt of such notice, Clicks
13 shall have the option to provide Dr. Held, at the addresses listed in Section 9, with testing
14 information demonstrating its compliance with Section 2.4. If such testing information is
15 satisfactory to Dr. Held, no further action shall be taken by Dr. Held. If such testing information is
16 not satisfactory to Dr. Held, then within 60 days of Dr. Held informing Clicks in writing that the
17 testing information is not satisfactory and reasons for such determination, Dr. Held and Clicks agree
18 to mediate any alleged violation of Section 2.4 before the American Arbitration Association in New
19 York, New York. If such mediation is unsuccessful, then Dr. Held may bring any action allowable
20 by law to enforce the provisions of Section 2.4. Clicks agrees to use its best efforts to cure any
21 alleged breach of Section 2.4 during the exchange of information and mediation procedures.

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

27 Dr. Held and his attorneys agree to comply with the reporting form requirements referenced
28 in California Health & Safety Code §25249.7(f).

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Dr. Held and Clicks agree to mutually employ their and their counsel’s best efforts to
3 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner and defend any appellate review of the Court’s approval.
5 The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed
6 motion is required to obtain judicial approval of this Consent Judgment which Dr. Held shall draft
7 and file, and Clicks shall join. If any third party objection is filed to the noticed motion, Dr. Held
8 and Clicks shall work together to file a joint reply and appear at any hearing before the Court. This
9 provision is a material component of the Consent Judgment and shall be treated as such in the event
10 of a breach.

11 **13. MODIFICATION**

12 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
13 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
14 of any party and entry of a modified Consent Judgment by the Court.

15 **14. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective parties and have read, understood, and agree to all of the terms and conditions of this
18 Consent Judgment.

<p>1 AGREED TO:</p> <p>2 Date: <u>09/24/2008</u></p> <p>3 <i>Anthony E. Held</i></p> <p>4 By: _____</p> <p>5 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.</p> <p>6</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____</p> <p>Defendants, CLICKS WORLDWIDE, LLC, FASHION ACCESSORY BAZAAR, LLC, and FAB/STARPOINT</p>
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7 **IT IS SO ORDERED.**

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9 Date: _____

 JUDGE OF THE SUPERIOR COURT

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1 AGREE TO:
2 Date: _____
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4 By: _____
5 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.
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AGREE TO:
Date: 9/23/2008
By: [Signature] Chief Operating Officer
Defendants, CLICKS WORLDWIDE,
LLC, FASHION ACCESSORY
BAZAAR, LLC, and FAB/STARPOINT

7 **IT IS SO ORDERED.**

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9 Date: _____

10 JUDGE OF THE SUPERIOR COURT
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