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

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THE WALT DISNEY COMPANY
8 500 S. Buena Vista
Burbank, CA 91521

9 Counsel for Defendant
10 DISNEY STORE USA, LLC

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

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

15 Plaintiff,

16 v.

17 DISNEY STORES WORDWIDE; THE WALT
18 DISNEY COMPANY; THE CHILDREN'S
19 PLACE RETAIL STORES; and DOES 1
through 150, inclusive,

20 Defendants.

Case No. CGC-08-480261

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and The Walt Disney Company**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Disney Store USA, LLC, (erroneously named in the Complaint, though
5 the complaint is deemed amended to name Disney Store USA, LLC) (hereinafter “Disney”), with Dr.
6 Held and Disney collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Disney employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
14 Code §25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that Disney has manufactured, distributed and/or sold in the State of
17 California children’s sporting toys containing the di(2ethylhexyl)phthalate (“DEHP”). DEHP is
18 listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects
19 and other reproductive harm and shall be referred to herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are children’s sporting toys
22 manufactured, imported, distributed and/or sold in California by Disney that contain the Listed
23 Chemical, including but not limited to, *Baseball Set Cars (#4 90862 60011 9)*. All such items shall
24 be referred to herein as the “Products.”

25 **1.6 Notice of Violation**

26 On or about May 23, 2008, Dr. Held served Disney and various public enforcement agencies
27 with a “60-Day Notice of Violation” (the “Notice”) that provided Disney and such public enforcers
28

1 with notice that alleged that Disney was in violation of California Health & Safety Code §25249.6 for
2 failing to warn consumers and customers that the Products exposed users in California to the Listed
3 Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notice. As a
4 direct result of the Notice, Disney immediately began to implement a process for the reformulation of
5 the Products at issue.

6 **1.7 Complaint**

7 On September 26, 2008, Dr. Held, who was and is acting in the interest of the general public
8 in California, filed a complaint in the Superior Court in and for the County of San Francisco, naming
9 Disney and The Children's Place Retail Stores, Inc. ("Children's Place") as defendants and alleging
10 violations of Health & Safety Code §25249.6 by Disney and Children's Place based on the alleged
11 exposures to the Listed Chemical contained in the Products manufactured, distributed and/or offered
12 for sale in California by Disney and Children's Place ("Complaint").

13 **1.8 No Admission**

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

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the parties stipulate that this Court has
24 jurisdiction over Disney as to the allegations contained in the Complaint, that venue is proper in the
25 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment.

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

As of the Effective Date, Disney shall only manufacture, distribute, sell, or cause to be manufactured, distributed, or offered for sale Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Consent Judgment, "Phthalate-Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or other comparable methodologies accepted by one or more federal and/or state agencies.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code §25249.7(b)

In settlement of all the claims referred to in this Consent Judgment against it, Disney shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided by California Health & Safety Code §25249.12(d). Disney shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for OEHHA") in the amount of \$1,500, representing 75% of the total penalty and (b) one check to "Hirst & Chanler LLP in Trust for A. Dr. Held" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500. The second 1099 shall be issued to Dr. Held in the amount of \$500, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be delivered on or before the Effective Date, at the following address:

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2 HIRST & CHANLER LLP
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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4. REIMBURSEMENT OF FEES AND COSTS

4.1 Attorney Fees and Costs.

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. After the other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Disney shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Disney attention, and negotiating a settlement in the public interest. Disney shall pay Dr. Held and his counsel \$15,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on or before the Effective Date, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

Disney shall issue a separate 1099 for fees and cost paid in the amount of \$15,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).

5. RELEASE OF ALL CLAIMS

5.1 Dr. Held's Release of Disney

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and

1 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
2 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
3 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
4 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
5 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
6 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
7 Disney and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
8 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
9 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
10 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
11 release is limited to those claims that arise under Proposition 65, as such claims relate to Disney's
12 alleged failure to warn about exposures to or identification of the Listed Chemical contained in the
13 Products.

14 The Parties further understand and agree that the above releases shall not extend upstream to
15 any entities that manufactured the Products or any component parts thereof, or any distributors or
16 suppliers who sold the Products or any component parts thereof to Disney.

17 Dr. Held and Children's Place have settled the claims that arose out of the facts set forth in the
18 Complaint by way of a separate settlement agreement, attached hereto as Exhibit 1. Within five days
19 of approval of this Consent Judgment, Dr. Held shall dismiss Children's Place from this lawsuit with
20 prejudice.

21 **5.2 Disney's Release of Dr. Held**

22 Disney waives any and all claims against Dr. Held, his attorneys and other representatives, for
23 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
24 Held and his attorneys and other representatives, whether in the course of investigating claims or
25 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
26 Products.

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
4 has been fully executed by all parties, in which event any monies that have been provided to Dr.
5 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
6 (15) days after receiving written notice from Disney that the one year period has expired.

7 **7. SEVERABILITY**

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

11 **8. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
14 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Disney shall
15 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
16 the Products are so affected.

17 **9. NOTICES**

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

22 For Disney:

23 Heiko Schultz
24 Executive Counsel
25 The Walt Disney Company
26 500 S. Buena Vista
27 Burbank, CA 91521
28

1 For 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 to
8 which all notices and other communications shall be sent.

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

14 Dr. Held agrees to comply with the reporting form requirements referenced in California
15 Health & Safety Code §25249.7(f).

16 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
18 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
19 approval, Dr. Held and Disney and their respective counsel agree to mutually employ their best
20 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
21 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
22 include, at a minimum, cooperating on the drafting and filing any papers in support of the required
23 motion for judicial approval.

24 **13. MODIFICATION**

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and
26 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
27 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
28 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
advance of its consideration by the Court.

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14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: July 10, 2009

Date: _____

By: *Anthony E Held*
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: *James W Kapenstein*
James Kapenstein, V. President
Defendant, DISNEY STORE USA, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

SETTLEMENT AGREEMENT

1. Introduction.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. ("Held"), Disney Store USA, LLC ("Disney") and The Children's Place Retail Stores, Inc. ("Children's Place"), with Held, Disney and Children's Place collectively referred to as the "Parties."

2. The Lawsuit.

On or about September 26, 2008, Held filed a complaint (the "Complaint") in the Superior Court for the City and County of San Francisco, styled *Anthony P. Held, Ph.D., P.E. v. Disney Stores Worldwide, et al.*, Case No. 480261 (the "Lawsuit"), initiating an action against The Walt Disney Company and Children's Place asserting violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"). Disney and The Walt Disney Company assert that the Disney-related entity properly sued in the Lawsuit is Disney Store USA, LLC. The Lawsuit arises from the alleged failure to warn about exposures to or identification of di(2-ethylhexyl)phthalate ("DEHP") contained in children's sporting toys manufactured, imported, distributed, shipped and/or sold in California, including but not limited to *Baseball Set Cars (#4 90862 6011 9)* (the "Products").

3. The Consent Judgment.

To avoid costly litigation, Held, Disney and Children's Place have decided to resolve the Lawsuit as to Children's Place by way of this Settlement Agreement. Held and Disney have decided to resolve this Lawsuit as to Disney by way of the Consent Judgment attached hereto as Exhibit A (the "Consent Judgment"). The Consent Judgment is incorporated herein by reference. This Settlement Agreement is intended to be a supplement to and consistent with the Consent Judgment, and is attached as Exhibit 1 to the Consent Judgment.

4. No Admission.

Disney and Children's Place deny the material, factual and legal allegations contained in Held's Complaint, maintain that all products they have distributed, shipped and/or sold in California have been and are in compliance with all laws, and asserts they are not proper parties to the Lawsuit. Nothing in this Settlement Agreement shall be construed as an admission by Disney or Children's Place of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Disney or Children's Place of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Disney and Children's Place.

5. Monetary Payments/Reimbursement of Fees And Costs.

The reimbursement of fees and costs by Children's Place pursuant to this Settlement Agreement is made as part of and to facilitate between all Parties a full settlement of the Lawsuit and all claims arising from the facts referred to in the Complaint, and is made in consideration of the release of all claims against Children's Place referred to herein, including those of Held and any claims of Disney arising from the Lawsuit.

In settlement of all claims referred to in this Settlement Agreement, Children's Place shall reimburse directly to Held and his counsel a total of \$3,000 for fees and costs incurred as a result of investigating this matter and negotiating a settlement in the public interest. The \$3,000 paid to Held and his counsel by Children's Place is part of the total of \$18,000 in attorneys' fees and costs reimbursed to Held and his counsel as reflected in the Consent Judgment. Hirst & Chanler LLP will cause a completed W-9 Form with respect to itself to be provided to Children's Place or counsel for Children's Place on or before July 9, 2009. Children's Place shall issue a 1099 to Hirst & Chanler LLP for the above fees and costs. The payment shall be made payable to "Hirst & Chanler LLP" and

shall be delivered on or before July 30, 2009, to Hirst & Chanler LLP, Attn: Proposition 65 Controller, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

6. Release Of All Claims.

6.1 Release of Children's Place and Downstream Customers.

In further consideration of the promises and agreements contained herein, and for the payments to be made pursuant to Paragraph 5 herein, Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and on behalf of the general public to the extent allowed by law, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against Children's Place and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to Children's Place's alleged failure to warn about exposures to or identification of DEHP contained in the Products. The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Children's Place. Within five business days of Court approval of the Consent Judgment, Held shall dismiss Children's Place from the Lawsuit with prejudice.

6.2 Mutual Release of Claims by Disney and Children's Place.

Except for the obligations set forth in this Settlement Agreement and contingent upon compliance with this Settlement Agreement, Disney and Children's Place, for themselves, their principals, officers, directors, administrators, whole or partial successors, subsidiaries, divisions, affiliates, representatives, agents, servants, employees, partners, licensees and assigns, do hereby release and fully discharge each other, along with Disney's and Children's Place's principals, officers, directors, administrators, whole or partial successors, subsidiaries, divisions, affiliates, representatives, agents, servants, employees, partners, licensees, assigns, legal counsel, and other representatives from any and all claims, actions, causes of action, or demands of any nature whatsoever, which they now have, or ever have had, against each other arising from the Lawsuit and facts set forth in the Complaint.

7. Severability.

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. Entire Agreement.

This Settlement Agreement and the Consent Judgment contain the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9. Governing Law.

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is

repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, Children's Place shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

10. Notices.

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

To Held:

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

To Disney:

Heiko Schultz
Executive Counsel
The Walt Disney Company
500 S. Buena Vista
Burbank, CA 91521-0567

To Children's Place:

M. Elizabeth McDaniel
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109

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

11. Counterparts; Facsimile Signatures.

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

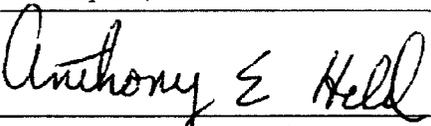
12. Modification.

This Settlement Agreement may be modified only by written agreement of the Parties.

13. Authorization.

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: July 10, 2009
By: 
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 7/10/09
By: 
Ellen Cho, Senior Counsel
THE CHILDREN'S PLACE
RETAIL STORES, INC.

AGREED TO:

Date: _____

By: _____

DISNEY STORE USA, LLC

12. Modification.

This Settlement Agreement may be modified only by written agreement of the Parties.

13. Authorization.

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: _____

By: _____
ANTHONY E. HELD, Ph.D., P.E.

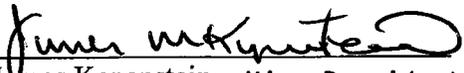
AGREED TO:

Date: _____

By: _____
Sue Riley, Executive Vice President
THE CHILDREN'S PLACE
RETAIL STORES, INC.

AGREED TO:

Date: _____

By: 
James Kapenstein, Vice President
DISNEY STORE USA, LLC