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10 Attorneys for Defendant
11 TOMMY HILFIGER U.S.A., INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 TOMMY HILFIGER U.S.A., INC.; *et al.*,

20 Defendants.

Case No. CGC-08-481439

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Tommy Hilfiger U.S.A., Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Dr. Held") and Tommy Hilfiger U.S.A., Inc. (hereinafter "Tommy Hilfiger"), with Dr.
5 Held and Tommy Hilfiger collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendants**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that Tommy Hilfiger manufactured, distributed and/or sold in the State of
16 California children's inflatable vinyl toys containing di(2 ethylhexyl)phthalate ("DEHP"). DEHP is
17 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
18 Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical known to the State of California to
19 cause birth defects and other reproductive harm. DEHP is referred to herein as the "Listed
20 Chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: children's
23 inflatable vinyl toys containing di(2-ethylhexyl)phthalate including, but not limited to, *Tommy*
24 *Hilfiger Layette Beach in a Bag #BAS04 (#7 48763 31466 7)*. All such items shall be referred to
25 herein as the "Products."
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1 **1.6 Notice of Violation**

2 On November 7, 2008, Dr. Held served Tommy Hilfiger and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” that provided Tommy Hilfiger and
4 such public enforcers with notice that alleged that Tommy Hilfiger was in violation of California
5 Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products
6 exposed users in California to DEHP. As a direct result of the Notice, Tommy Hilfiger notified Dr.
7 Held that it had discontinued production of the Products at issue and would immediately begin
8 implementing a process for the reformulation of the Products at issue in the event they were returned
9 to production.

10 **1.7 Complaint**

11 On February 25, 2009, Dr. Held, who was and is acting in the interest of the general public in
12 California, in the Superior Court in and for the County of San Francisco, filed a first amended
13 complaint in the case of *Held v. Ascendia Brands, Co., Inc., et al.*, adding Tommy Hilfiger U.S.A.,
14 Inc. as a defendant and alleging violations of Health & Safety Code §25249.6 by Tommy Hilfiger
15 based on the alleged exposures to DEHP contained in the Products manufactured, distributed and/or
16 offered for sale in California by Tommy Hilfiger (“Complaint”).

17 **1.8 No Admission**

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

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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Tommy Hilfiger as to the allegations contained in the Complaint, that venue is
4 proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean June 30, 2009.

8 **2. INJUNCTIVE RELIEF: REFORMULATION**

9 **2.1 Reformulation Commitment**

10 As of the Effective Date, Tommy Hilfiger shall only manufacture or cause to be manufactured
11 Products for sale in California that are Phthalate Free. For purposes of this Consent Judgment,
12 “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts per million
13 (“ppm”) of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency
14 (“EPA”) testing methodologies 3580A and 8270C.

15 **3. MONETARY PAYMENTS**

16 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

17 In settlement of all the claims referred to in this Consent Judgment against it, Tommy Hilfiger
18 shall pay \$4,500 in civil penalties to be apportioned in accordance with California Health & Safety
19 Code §25192, with 75% of these funds remitted to the State of California’s Office of Environmental
20 Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as
21 provided by California Health & Safety Code §25249.12(d). Tommy Hilfiger shall issue two
22 separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in
23 Trust for the State of California’s Office of Environmental Health Hazard Assessment (“Hirst &
24 Chanler LLP in Trust for OEHHA”) in the amount of \$3,375, representing 75% of the total penalty
25 and (b) one check to “Hirst & Chanler LLP in Trust for A. Dr. Held” in the amount of \$1,125,
26 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
27 The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-

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1 0284486) in the amount of \$3,375. The second 1099 shall be issued to Dr. Held in the amount of
2 \$1,125, whose address and tax identification number shall be furnished, upon request, at least five
3 calendar days before payment is due. The payments shall be delivered on or before the Effective

4 Date, at the following address:

5 HIRST & CHANLER LLP
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

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

11 **4.1 Attorney Fees and Costs.**

12 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
14 issue to be resolved after the material terms of the agreement had been settled. After the other
15 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
16 compensation due to Held and his counsel under general contract principles and the private attorney
17 general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work
18 performed through the mutual execution of this agreement. Under these legal principles, Tommy
19 Hilfiger shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating,
20 bringing this matter to Tommy Hilfiger attention, and negotiating a settlement in the public interest.
21 Tommy Hilfiger shall pay Dr. Held and his counsel \$26,500 for all attorneys' fees, expert and
22 investigation fees, and related costs. The payment shall be issued in a third separate check made
23 payable to "Hirst & Chanler LLP" and shall be delivered on or before the Effective Date, at the
24 following address:

25 HIRST & CHANLER LLP
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710

1 Tommy Hilfiger shall issue a separate 1099 for fees and cost paid in the amount of \$26,500 to Hirst
2 & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-
3 3929984).

4 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

5 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Tommy Hilfiger will reimburse
6 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
7 this settlement in the trial court, in an amount not to exceed \$4,000. Such additional fees and costs,
8 exclusive of fees and costs that may be incurred in the event of an appeal include, but are not limited
9 to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements
10 referenced in Health & Safety Code §25249.7(f), responding to any third party objections,
11 corresponding with opposing counsel, and appearing before the Court related to the approval process.

12 Reimbursement of such additional fees and costs shall be due within fifteen days after receipt
13 of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee Claim
14 shall be made to "Hirst & Chanler LLP," and the payment shall be delivered at the following address:

15 HIRST & CHANLER LLP
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 Tommy Hilfiger has the right to object to such reimbursement and may submit the resolution
21 of this issue to the American Arbitration Association (AAA) in Northern California to determine the
22 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of
23 objection or decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days
24 provided for payment following receipt of the Additional Fee Claim. If an arbitration notice is not
25 filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP
26 §1021.5 and this settlement to recover additional attorney fees and costs incurred as set forth in this
27 paragraph. In the event Tommy Hilfiger submits the matter to arbitration, Dr. Held may seek,
28 pursuant to CCP §1021.5, reasonable attorney fees and costs incurred for the arbitration.

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Dr. Held’s Release of Tommy Hilfiger**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
5 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
6 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
7 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
8 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
9 expenses (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any
10 nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against
11 Tommy Hilfiger and each of its downstream distributors, wholesalers, licensors, licensees,
12 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
13 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
14 shareholders, agents, and employees, and sister and parent entities (collectively “Releasees”). This
15 release is limited to those claims that arise under Proposition 65 and the California Business &
16 Professions Code, section 17200, as such claims relate to Tommy Hilfiger’s alleged failure to warn
17 about exposures to or identification of DEHP contained in the Products.

18 The Parties further understand and agree that the above releases shall not extend upstream to
19 any entities that manufactured the Products or any component parts thereof, or any distributors or
20 suppliers who sold the Products or any component parts thereof to Tommy Hilfiger.

21 **5.2 Tommy Hilfiger’s Release of Dr. Held**

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

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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 Tommy Hilfiger 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 Covered Products, then
15 Tommy Hilfiger shall have no further obligations pursuant to this Consent Judgment with respect to,
16 and to the extent that, the Covered 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 Tommy Hilfiger:
23 Thomas A. Woods, Esq.
24 Greenberg Traurig LLP
25 1201 K Street, Suite 1100
26 Sacramento, CA 95814

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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

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 Tommy Hilfiger and their respective counsel agree to mutually employ their
20 best 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: **APPROVED**
By Anthony E Held at 9:35 am, 6/15/09

AGREED TO:
Date: JUN 12 2009

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

By: Thomas Linko
Thomas Linko, Senior Vice President,
Finance,
TOMMY HILFIGER U.S.A., INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT