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David Lavine, State Bar No. 166744  
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Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

NANCY SALES CO., INC., and DOES  
1-150, inclusive,

Defendant.

Case No. 109CV152731

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

Health & Safety Code § 25249.6 *et seq.*

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E., and Nancy Sales Co., Inc.**

3             This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter "Held"), and Nancy Sales Co., Inc. ("Nancy Sales Co."), with Held and Nancy Sales  
5 Co. together referred to as the "Parties."

6             **1.2 Plaintiff**

7             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 Defendant**

11            Nancy Sales Co. employs ten or more persons and is a person in the course of doing  
12 business for purposes of Proposition 65.

13            **1.4 General Allegations**

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

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as (1) children's  
22 plush toys containing the Listed Chemical including, but not limited to, (a) *Bob the Builder*  
23 *Plush*, (b) *Nickelodeon SpongeBob Squarepants Plush*, (c) *It's A Knock Out Boxing Glove*,  
24 #00055712 (#7 47482 34720 8); and (2) vinyl keychains containing the Listed Chemical  
25 including, but not limited to, *Butterfly Light Up Keychain*, #00064668 (#7 4782 35876 1). All  
26 such products containing the Listed Chemical are referred to hereinafter as the "Products."  
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1           **1.6    Notice of Violation**

2           On November 7, 2008 and April 30, 2009, Held served Nancy Sales Co. and various  
3 public enforcement agencies with a "60-Day Notice of Violation" (the "Notices") that provided  
4 Nancy Sales Co. with notice of alleged violations of Health & Safety Code §25249.6 for its  
5 failure to warn consumers that the Products that Nancy Sales Co. sold exposed users in California  
6 to the Listed Chemical.

7           **1.7    Complaint**

8           On September 18, 2009, Dr. Held, who was and is acting in the interest of the general  
9 public in California, filed a complaint in the Santa Clara County Superior Court naming Nancy  
10 Sales Co. as a defendant and alleging violations of Health & Safety Code §25249.6 by Nancy  
11 Sales Co. based on the alleged exposures to the Listed Chemical contained in the Products  
12 manufactured, distributed and/or offered for sale in California by Nancy Sales Co. ("Complaint").

13           **1.8    No Admission**

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

23           **1.9    Consent to Jurisdiction**

24           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
25 jurisdiction over Nancy Sales Co. as to the allegations contained in the Complaint, that venue is  
26 proper in the County of Santa Clara and that this Court has jurisdiction to enter and enforce the  
27 provisions of this Consent Judgment.

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**1.10 Effective Date**

For purposes of this Consent Judgment, the term "Effective Date" shall mean January 15, 2010.

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

**2.1 Product Warnings**

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

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

**(a) Retail Store Sales.**

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

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

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

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:<sup>1</sup>

**WARNING:** These products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

*[list products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.** In the event that Nancy Sales Co. sells Products via mail order catalog or the internet to customers located in California after the Effective Date that are not Reformulated Products, Nancy Sales Co. shall provide a warning for Products sold via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

**(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page, and either in the same location as the display and/or description of the Product or in a footnote identifying the warning:

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

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<sup>1</sup>For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 In the alternative, Nancy Sales Co. may utilize a designated symbol to cross reference the  
2 applicable warning and shall define the term "designated symbol" with the following language on  
3 the inside of the front cover of the catalog or on the same page as any order form for the  
4 Product(s):

5 **WARNING:** Certain products identified with this symbol  
6 ▼ and offered for sale in this catalog  
7 contain DEHP, a phthalate chemical known  
8 to the State of California to cause birth  
9 defects and other reproductive harm.

10 The designated symbol must appear on the same page and in close proximity to the  
11 display and/or description of the Product. On each page where the designated symbol appears,  
12 Nancy Sales Co. must provide language directing the consumer to the warning language and  
13 definition of the designated symbol.

14 If Nancy Sales Co. elects to provide warnings in the mail order catalog, then the warnings  
15 must be included in all catalogs offering to sell one or more Products printed after the Effective  
16 Date.

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

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

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

1                   **WARNING:** *Products identified on this page with the*  
2                   *following symbol contain DEHP, a*  
3                   *phthalate chemical known to the State of*  
4                   *California to cause birth defects and other*  
5                   *reproductive harm: ▼.*

6                   **2.2    Exceptions To Warning Requirements**

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

- 8                   (i)     Any Product manufactured by Nancy Sales Co. prior to the Effective Date;  
9                   or  
10                  (ii)    Reformulated Products (as defined in Section 2.3 below).

11                  **2.3    Reformulation Standards**

12                  Reformulated Products are defined as those Products containing less than or equal to  
13                  1,000 parts per million ("ppm") of the Listed Chemical. The warnings required pursuant to  
14                  Section 2.1 above shall not be required for Reformulated Products.

15                  **2.4    Reformulation Commitment**

16                  Nancy Sales Co. hereby commits that one hundred percent (100%) of the Products that it  
17                  sells in California after the Effective Date shall qualify as Reformulated Products.

18                  **3.    MONETARY PAYMENTS**

19                  **3.1    Payments Pursuant to Health & Safety Code § 25249.7(b)**

20                  3.1.1    In settlement of all claims related to the Products and Listed Chemical  
21                  referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code  
22                  Section 25249.7(b), Nancy Sales Co. shall pay \$10,000.00 in civil penalties.

23                  3.1.2    Civil penalties are to be apportioned in accordance with California Health  
24                  & Safety Code Section 25192, with 75% of these funds remitted to the State of California's  
25                  Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the  
26                  penalty remitted to Anthony Held as provided by California Health & Safety Code Section  
27                  25249.12(d). Nancy Sales Co. shall issue two separate checks for the penalty payment: (a) one  
28                  check made payable to "Chanler Law Group in Trust for OEHHA" in the amount of \$7500.00,  
                  representing 75% of the total penalty; and (b) one check to "Chanler Law Group in Trust for

1 Anthony Held" in the amount of \$2500.00 representing 25% of the total penalty. Two separate  
2 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA  
3 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be provided five  
4 calendar days before the payment is due.

5           **3.1.3 Payment Timing.** Not later than five (5) days following the Effective Date,  
6 the penalty payment shall be made by Nancy Sales Co. to Hunton & Williams LLP, to be held in  
7 a client Trust Account. Hunton & Williams LLP shall provide Plaintiff with written notice that it  
8 has received the penalty payment from Nancy Sales Co. Such penalty payment shall remain in  
9 the Trust Account until this Consent Judgment has been approved by the Court at the approval  
10 hearing and notice of approval has been provided to Nancy Sales Co. by Plaintiff. Payment shall  
11 be delivered to the following address within five days of such approval and notification:

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

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

16 **4.1 Attorney Fees and Costs.**

17           The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
19 this fee issue to be resolved after the material terms of the agreement had been settled. Nancy  
20 Sales Co. then expressed a desire to resolve the fee and cost issue shortly after the other  
21 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
22 the compensation due to Dr. Held and his counsel under general contract principles and the  
23 private attorney general doctrine codified at California Code of Civil Procedure (C.C.P.)  
24 Section 1021.5. Nancy Sales Co. shall reimburse Dr. Held and his counsel a total of \$33,500.00  
25 for fees and costs incurred as a result of investigating, bringing this matter to Nancy Sales Co.'s  
26 attention, and litigating and negotiating a settlement in the public interest. Not later than five (5)  
27 days following the execution of this Consent Judgment by both parties, the fee and cost payment  
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1 shall be made by Nancy Sales Co. to Hunton & Williams LLP, to be held in a client Trust  
2 Account. Such fee and cost payment shall remain in the Trust Account until this Consent  
3 Judgment has been entered by the Court.

4 Hunton & Williams LLP shall provide Plaintiff with written notice that it has  
5 received the penalty payment from Nancy Sales Co. Such fee and cost payment shall remain in  
6 the Trust Account until this Consent Judgment has been approved by the Court at the approval  
7 hearing and notice of approval has been provided to Nancy Sales Co. by Plaintiff. Payment shall  
8 be delivered to the following address within five days of such approval and notification:

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

14 **5. RELEASE OF ALL CLAIMS**

15 **5.1 Release of Nancy Sales Co. and Downstream Customers**

16 In further consideration of the promises and agreements herein contained, and for the  
17 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and  
18 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
19 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
20 form of legal action and releases all claims, including, without limitation, all actions, and causes  
21 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
22 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
23 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
24 (collectively "Claims"), that were brought or could have been brought against Nancy Sales Co. or  
25 its affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
26 shareholders, agents, employees, and sister and parent entities and each of Nancy Sales Co.'s  
27 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,  
28 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,  
and their respective officers, directors, attorneys, representatives, shareholders, agents, employees

1 and sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any  
2 other statutory or common law Claims that could have been asserted including such Claims as  
3 they relate to Nancy Sales Co. and each of its Releasees' alleged failure to warn about exposures  
4 to or identification of the Listed Chemical contained in the Products.

5 **5.2 Nancy Sales Co.'s Release of Held**

6 Nancy Sales Co. waives any and all claims against Held, his attorneys and other  
7 representatives, for any and all actions taken or statements made (or those that could have been  
8 taken or made) by Held and his attorneys and other representatives, whether in the course of  
9 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
10 and/or with respect to the Products.

11 **6. COURT APPROVAL**

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

18 **7. SEVERABILITY**

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

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and apply within the State of California. In the event that Proposition 65 is repealed or  
25 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the  
26 Products, then Nancy Sales Co. shall provide written notice to Held of any asserted change in the  
27 law, and shall have no further obligations pursuant to this consent judgment with respect to, and  
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1 to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be  
2 interpreted to relieve Nancy Sales Co. from any obligation to comply with any pertinent state or  
3 federal toxics control laws.

4 **9. NOTICES**

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

9 To Nancy Sales Co.:

10 Stephen B. Lipkin, President  
11 Nancy Sales Co., Inc.  
12 22 Willow Street  
13 Chelsea, MA 02150

14 With copies to:

15 Malcom Weiss  
16 Catherine Allen  
17 Hunton & Williams LLP  
18 550 South Hope Street, Suite 2000  
19 Los Angeles, CA 90071

20 To Held:

21 Proposition 65 Coordinator  
22 Chanler Law Group  
23 2560 Ninth Street  
24 Parker Plaza, Suite 214  
25 Berkeley, CA 94710

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

28 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

This Consent Judgment 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 documents.

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

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

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that pursuant to Health & Safety Code Section 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Held, Nancy Sales Co. and their respective counsel agree to mutually support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

13. **MODIFICATION**

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

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 of this Consent Judgment.

AGREED TO: **APPROVED**  
By Anthony Held at 12:14 pm, Dec 16, 2009  
Date: \_\_\_\_\_

AGREED TO:  
Date: 12/16/09

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

By: Stephen Lipkin  
Stephen Lipkin, President  
Defendant, NANCY SALES CO., INC.