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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
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12 ANTHONY E. HELD, Ph.D., P.E.,
13 Plaintiff,
14 v.
15 SYKEL ENTERPRISES, INC.; FABRIQUE
16 INNOVATIONS, INC.; and DOES 1 through
17 150, inclusive,
Defendants.

Case No. RG07350981

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Sykel Enterprises, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Sykel Enterprises, Inc. (hereinafter “Sykel”), with Dr. Held and Sykel
5 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 Sykel 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 & Safety
13 Code §25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Sykel has manufactured, distributed and/or sold in the State of California
16 vinyl fabric including, but not limited to, vinyl tablecloths containing di(2ethylhexyl)phthalate
17 (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
18 California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the
19 State of California to cause birth defects and other reproductive harm. DEHP shall be referred to
20 herein as “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined, as follows: vinyl fabric
23 manufactured, imported, distributed and/or sold in California by Sykel including, but not limited to,
24 vinyl tablecloths which contain the Listed Chemical. All such items shall be referred to herein as the
25 “Products.”

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1.6 Notice of Violation

On or about December 23, 2008 and February 24, 2009, Dr. Held served Sykel and Fabrique Innovations and various public enforcement agencies with a “60-Day Notice of Violation” and “Supplemental 60-Day Notice of Violation” (collectively, the “Notices”) that provided Sykel and such public enforcers with notice that alleged that Sykel was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. In response to each of the notices, Sykel immediately ceased the shipment of the Products into California and began to implement a reformulation process to remove the Listed Chemical from the Products. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.7 Complaint

On March 13, 2009, Dr. Held, who was and is acting in the interest of the general public in California, in the Superior Court in and for the County of Alameda, filed a fourth amended complaint in the case of *Held v. Toys “R” Us*, adding Sykel Enterprises as a defendant and alleging violations of Health & Safety Code §25249.6 by Sykel based on the alleged exposures to DEHP contained in the Products manufactured, distributed and/or offered for sale in California by Sykel (“Complaint”).

1.8 No Admission

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

1 **1.9 Consent to Jurisdiction**

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

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 1, 2009.

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

9 **2.1 Reformulation Commitment**

10 As of the Effective Date, Sykel shall only manufacture, or cause to be manufactured, Products
11 for sale in California that are Phthalate Free, as set forth below. For purposes of this Consent
12 Judgment, “Phthalate Free” Products shall mean Products containing less than or equal to 1,000 parts
13 per million (“ppm”) of the Listed Chemical, when analyzed pursuant to Environmental Protection
14 Agency (“EPA”) testing methodologies 3580A and 8270C. Sykel hereby commits that 100% of the
15 Products that it offers for sale in California after April 30, 2009 shall be Phthalate Free.

16 **2.2 Product Warnings**

17 After the Effective Date, Sykel shall not sell, ship, or offer to be shipped for sale in California,
18 Products containing the Listed Chemical unless such Products are shipped with the clear and
19 reasonable warnings set out in Section 2.3 and 2.4 or comply with the reformulation requirements of
20 Phthalate Free Products set out in Section 2.1.

21 Any warning issued for Products pursuant to Section 2.3 and 2.4 below, shall be prominently
22 placed with such conspicuousness as compared with other words, statements, designs or devices as to
23 render it likely to be read and understood by an ordinary individual under customary conditions
24 before purchase or, for Products shipped directly to an individual in California, before use.

25 **2.3 Warnings For Retail Store Sales**

26 **(a) Product Labeling.** Sykel may perform its warning obligation by
27 affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold
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1 in retail outlets in California by Sykel or its agents, that states:

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

5 **(b) Point-of-Sale Warnings.** Sykel may perform its warning obligations
6 by ensuring that signs are posted at retail outlets in the State of California where the Products are
7 sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to
8 the point of display of the Products that states:

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

12 Where more than one Product is sold in proximity to other like items or to those that do not
13 require a warning (*e.g.*, Phthalate Free as defined in Section 2.1), the following statement must be
14 used:¹

15 **WARNING:** The following products contain DEHP, a
16 phthalate chemical known to the State of
17 California to cause birth defects and other
18 reproductive harm:

19 [*list products for which warning is required*]

20 **2.4 Warnings For Mail Order Catalog and Internet Sales.**

21 Sykel shall satisfy its warning obligations for Products sold via mail order catalog or the
22 Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the
23 website. Warnings given in the mail order catalog or on the website shall identify the specific
24 Product to which the warning applies as further specified in subsections (a) and (b) below.

25 **(a) Mail Order Catalog Warning.** Any warning provided in a mail order
26 catalog must be in the same type size or larger than the Product description text within the catalog.

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28 ¹ For purposes of this Consent Judgment, “sold in proximity to other like items” shall mean that the Product and
another product are offered for sale close enough to each other so that the consumer, under customary conditions of
purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 The following warning shall be provided on the same page and in the same location as each display
2 of the Product:

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

6 Where it is impracticable to provide the warning on the same page and in the same location as
7 the display of the Product, Sykel may utilize a designated symbol (▲) to cross reference the
8 applicable warning and shall define the term “designated symbol” with the following language on the
9 inside of the front cover of the catalog and on the same page as any order form for the Product(s):

10 **WARNING:** Certain products identified with this symbol ▲
11 and offered for sale in this catalog contain
12 DEHP, a phthalate chemical known to the State
13 of California to cause birth defects and other
14 reproductive harm.

15 The designated symbol must appear on the same page and in close proximity to the display or
16 description of the Product on such page. On each page where the designated symbol appears, Sykel
17 must provide a reference directing the consumer to the warning language and definition of the
18 designated symbol.

19 If Sykel elects to sell one or more Products to consumers via mail order catalog after the
20 Effective Date, then the warnings must be included in all catalogs containing the Products which are
21 distributed in California as of the Effective Date.

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

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

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

6 **WARNING:** Products identified on this page with the
7 following symbol ▲ contain DEHP, a phthalate
8 chemical known to the State of California to
 cause birth defects and other reproductive harm.

9 **2.5 Exceptions To Warning Requirements**

10 The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

- 11 (i) any Products received by Sykel prior to receipt of the Notice, provided that
12 Sykel does not have actual knowledge, or reason from communications with its
13 suppliers of the Products to believe, that the Listed Chemical is present in such
14 Products in concentrations exceeding 1,000 ppm each; or
15 (ii) Phthalate Free Products (as defined in Section 2.1).

16 **2. MONETARY PAYMENTS**

17 **2.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

18 In settlement of all the claims referred to in this Consent Judgment against it, Sykel shall pay
19 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
20 §25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health
21 Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided
22 by California Health & Safety Code §25249.12(d). Sykel shall issue two separate checks for the
23 penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
24 California’s Office of Environmental Health Hazard Assessment (“Hirst & Chanler LLP in Trust for
25 OEHHA”) in the amount of \$1,500, representing 75% of the total penalty and (b) one check to “Hirst
26 & Chanler LLP in Trust for A. Dr. Held” in the amount of \$500, representing 25% of the total
27 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued
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1 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500.
2 The second 1099 shall be issued to Dr. Held in the amount of \$500, whose address and tax
3 identification number shall be furnished, upon request, at least five calendar days before payment is
4 due. The payments shall be delivered on or before ten days after the Effective Date, at the following
5 address:

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

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

12 **3.1 Attorney Fees and Costs.**

13 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
14 private attorney general doctrine and principles of contract law. Under these legal principles, Sykel
15 shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing
16 this matter to Sykel attention, and negotiating a settlement in the public interest. Sykel shall pay Dr.
17 Held and his counsel a total amount of \$19,700 for all attorneys' fees, expert and investigation fees,
18 and related costs. Sykel shall pay Dr. Held and his counsel the amount of \$19,700 as follows: (a) a
19 payment of \$6,600 on or before May 10, 2009; (b) a payment of \$6,600 on or before June 10, 2009;
20 and (c) a payment of \$6,500 on or before July 10, 2009. The payments shall be made payable to
21 "Hirst & Chanler LLP" and shall be delivered to the following address:

22 HIRST & CHANLER LLP
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 Sykel shall issue a separate 1099 for fees and cost paid in the total amount of \$19,700 to Hirst &
28 Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-
3929984).

1 **3.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

2 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Sykel will reimburse Dr. Held and
3 his counsel for their reasonable fees and costs incurred in seeking judicial approval of this settlement
4 in the trial court, in an amount not to exceed \$2,000. Such additional fees and costs, exclusive of fees
5 and costs that may be incurred in the event of an appeal include, but are not limited to, drafting and
6 filing of the motion to approve papers, fulfilling the reporting requirements referenced in Health &
7 Safety Code §25249.7(f), responding to any third party objections, corresponding with opposing
8 counsel, and appearing before the Court related to the approval process.

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

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

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

27 **4. RELEASE OF ALL CLAIMS**

28 **4.1 Dr. Held’s Release of Sykel**

 In further consideration of the promises and agreements herein contained, and for the

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

15 In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents,
16 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity
17 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
18 and releases all Claims against Sykel and each of its Releasees related to Sykel's products.

19 **4.2 Sykel's Release of Dr. Held**

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

25 **5. COURT APPROVAL**

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

4 **6. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
6 Consent Judgment are Dr. Held by a court to be unenforceable, the validity of the enforceable
7 provisions remaining shall not be adversely affected.

8 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 For Sykel:

20 Jeffrey M. Cassuto, Esq.
21 Cassuto Law Group
22 111 Third Avenue, Suite 8C
New York, NY 10003

23 For Dr. Held:

24 Proposition 65 Coordinator
25 Hirst & Chanler, LLP
26 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

6 **10. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

9 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

17 **12. MODIFICATION**

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

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1 **13. AUTHORIZATION**

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

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5 **AGREED TO:** **APPROVED**
By Anthony E Held at 12:02 pm, 5/1/09
6 Date: _____

AGREED TO:
Date: 5/5/09

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

By: [Signature]
Defendant, SYKEL ENTERPRISES, INC.

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11 **IT IS SO ORDERED.**

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13 Date: _____

JUDGE OF THE SUPERIOR COURT

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