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Attorneys for Plaintiffs
ANTHONY E. HELD, PH.D., P.E. and
RUSSELL BRIMER

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

ANTHONY E. HELD, PH.D., P.E.; and) Case No. CIV-1003621
RUSSELL BRIMER,)
)
Plaintiffs,) **[PROPOSED] CONSENT JUDGMENT**
)
v.)
)
PACIFIC CONNECTIONS, INC.; JO-ANN)
STORES, INC.; and DOES 1-150, inclusive,)
)
Defendants.)
_____)

1 **1. INTRODUCTION**

2 **1.1 Anthony Held, Russell Brimer, and Pacific Connections, Inc.**

3 This Consent Judgment is entered into by and between plaintiffs, Anthony E. Held, Ph.D.,
4 P.E. (“Held”) and Russell Brimer (“Brimer”), with Held and Brimer collectively referred to as
5 “Plaintiffs”, on the one hand, and defendant Pacific Connections, Inc. (“Pacific”) on the other hand.
6 Plaintiffs and Pacific shall hereinafter be collectively referred to as the “parties.”

7 **1.2 Held and Brimer**

8 Plaintiffs are both individuals residing in the State of California who seek to promote
9 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
10 hazardous substances contained in consumer and commercial products.

11 **1.3 Pacific Connections, Inc.**

12 Pacific 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 &
14 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Plaintiffs allege that Pacific has manufactured, imported, distributed and/or sold in
17 California handbag handles containing lead and di(2-ethylhexyl)phthalate (“DEHP”) and handbags
18 that contain DEHP, without the requisite Proposition 65 warnings. Lead is listed pursuant to
19 Proposition 65 among those chemicals that are known to birth defects and other reproductive harm.
20 DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other
21 reproductive harm.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: (1) handbag
24 handles containing lead and DEHP including, but not limited to, *Purs n-alize-it! Handbag Handles*,
25 *OBT128 (#7 33804 12269 1)* manufactured, imported, distributed and/or sold by, or on behalf of
26 Pacific; and (2) handbags that contain DEHP, including, but not limited to, *Pacific Connections*
27 *Designs Handbag (#7 33804 15998 7)* manufactured, imported, distributed and/or sold by, or on
28

1 behalf of Pacific. All such handbag handles containing lead and DEHP and handbags containing
2 DEHP are referred to hereinafter as the “Products.” Lead and DEHP shall hereinafter be referred to
3 collectively as the “Listed Chemicals.”

4 **1.6 Notices of Violation**

5 On July 17, 2009, Brimer served Pacific and various public enforcement agencies with a
6 document entitled “60-Day Notice of Violation” (“Notice”) that provided recipients with notice of
7 its alleged violations of California Health and Safety Code § 25249.6 for failing to warn its
8 customers and consumers in California that handbag handles sold by Pacific, exposed users to lead.

9 On October 29, 2010, Held served Pacific and various public enforcement agencies with a
10 Notice that that provided recipients with notice of Pacific’s alleged violations of California Health
11 and Safety Code § 25249.6 for failing to warn its customers and consumers in California that the
12 handbag handles also exposed users to DEHP.

13 On May 7, 2010, Brimer served Pacific and various public enforcement agencies with a
14 Notice that that provided recipients with notice of alleged violations of California Health and Safety
15 Code § 25249.6 for failing to warn customers that handbags sold by Pacific, exposed users in
16 California to DEHP.

17 The July 17, 2009, October 29, 2010, and May 7, 2010 notices shall hereinafter be referred
18 to collectively as “Notices.” To the best of the parties’ knowledge, no public enforcer has
19 commenced and is diligently prosecuting the allegations set forth in the Notices.

20 **1.7 Complaint**

21 On July 13, 2010, Brimer filed the instant action alleging violations of California Health &
22 Safety Code § 25249.6, based on exposures to lead contained in handbag handles sold without a
23 “clear and reasonable warning” by Pacific.

24 On February 9, 2011, the Plaintiffs filed the First Amended Complaint (“FAC”), the
25 operative pleading in this action, adding Jo-Ann Stores, Inc. (“Jo-Ann Stores”) as a defendant and
26 alleging violations of California Health & Safety code § 25249.6, based on exposures to lead and
27 DEHP contained in the Products sold by Pacific and Jo-Ann Stores.

1 **1.8 No Admission**

2 Pacific denies the material, factual, and legal allegations contained in Plaintiffs’ Notices and
3 FAC and maintains that all of the products that it has sold in California, including the Products,
4 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
5 construed as an admission by Pacific of any fact, finding, conclusion of law, issue of law, or
6 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
7 admission by Pacific of any fact, finding, conclusion of law, issue of law, or violation of law.
8 However, this section shall not diminish or otherwise affect Pacific’s obligations, responsibilities,
9 and duties under this Consent Judgment.

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the parties stipulate that this Court has
12 jurisdiction over Pacific as to the allegations contained in the FAC, that venue is proper in the
13 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
14 Consent Judgment.

15 **1.10 Effective Date**

16 For purposes of this Consent Judgment, the term “Effective Date” shall mean September 30,
17 2011.

18 **2. INJUNCTIVE RELIEF: REFORMULATION**

19 **2.1 Reformation Standards**

20 For purposes of this Consent Judgment, Reformulated Products are defined as those
21 Products: (1) containing DEHP in concentrations less than 0.1 percent (1,000 parts per million
22 (“ppm”)) in when analyzed pursuant to U.S. Environmental Protection Agency testing
23 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
24 the purpose of determining DEHP content in a solid substance; (2) containing lead in concentrations
25 less than or equal to 100 ppm when analyzed pursuant to Environmental Protection Agency testing
26 methodologies 3050B and 6010B; and (3) that yield a result no more than 1.0 micrograms of
27 residual lead content when analyzed pursuant to NIOSH Test Method 9100.
28

1 **2.2 Reformulation Commitment**

2 Commencing on the Effective Date, Pacific shall only ship, sell, or offer to ship for sale in
3 California, Products that qualify as Reformulated Products as defined in Section 2.1 above.

4 **3. MONETARY PAYMENTS**

5 **3.1 Civil Penalties**

6 Pursuant to Health & Safety Code § 25249.7(b) and in settlement of all of the claims
7 referred to in this Consent Judgment and alleged in the Notices and FAC, Pacific shall pay \$10,000
8 in civil penalties to be apportioned in accordance with California Health & Safety Code §§
9 25249.12(c)(1) & (d), with 75% of these funds remitted to the State of California’s Office of
10 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
11 amount remitted to Plaintiffs to be divided equally between them. This civil penalty amount
12 reflects a credit of \$20,000 provided by Plaintiffs based on Pacific’s commitment to reformulate
13 pursuant to Section 2 above.

14 Pacific shall issue two checks for the penalty payment payable to: (a) “The Chanler Group in
15 Trust for OEHHA” in the amount of \$7,500; and (b) “The Chanler Group in Trust for Anthony E.
16 Held, Ph.D., P.E. and Russell Brimer” in the amount of \$2,500. Three 1099 forms shall also be
17 issued for the above payments to: (a) the Office of Environmental Health Hazard Assessment, P.O.
18 Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); (b) Anthony E. Held; and (c) Russell
19 Brimer. Plaintiffs’ addresses and tax identification numbers shall be furnished by Plaintiffs’
20 counsel upon request, three calendar days before the payments are due. The payment shall be
21 delivered to Plaintiffs’ counsel on or before September 30, 2011, at the following address:

22 The Chanler Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

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

28 **4.1 Attorney’s Fees and Costs**

 The parties reached an accord on the compensation due to Plaintiffs and their counsel under
general contract principles and the private attorney general doctrine codified at California Code of

1 Civil Procedure (“CCP”) §1021.5. Pacific shall reimburse Plaintiffs and their counsel \$50,000 for
2 fees and costs incurred as a result of investigating, bringing this matter to defendant’s attention,
3 litigating, and negotiating a settlement in the public interest. This figure includes Plaintiffs’ future
4 fees and costs including fees incurred in seeking judicial approval of this Consent Judgment as well
5 as any other legal work performed after the execution of this Consent Judgment incurred in an effort
6 to obtain finality of the case. However, in the event a third party were to appeal entry of this
7 Consent Judgment, Plaintiffs and their counsel shall be entitled to seek their reasonable attorney’s
8 fees and costs associated with all appellate work defending the entry of judgment pursuant to CCP §
9 1021.5.

10 The check for reimbursement of fees and costs shall be made payable to “The Chanler
11 Group” and shall be delivered to Plaintiffs’ counsel, on or before September 30, 2011, at the
12 following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

18 A separate 1099 form shall be issued to “The Chanler Group” (EIN: 94-3171522) for the
19 reimbursement of Plaintiffs’ fees and costs.

20 **5. CLAIMS COVERED AND RELEASED**

21 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

22 This Consent Judgment is a full, final, and binding resolution between Plaintiffs, on behalf
23 of themselves and the general public in California, and Defendant, of any violation of Proposition
24 65 that was or could have been asserted by Plaintiffs against Defendant, its parents, subsidiaries,
25 affiliated entities that are under common ownership, directors, officers, employees, attorneys, and
26 each entity to whom Defendant directly or indirectly distributes or sells the Products, including but
27 not limited to downstream distributors, wholesalers, customers, retailers including, but not limited
28 to, Jo-Ann Stores, franchisees, cooperative members, licensors, and licensees (“Releasees”), based
on their failure to warn about the alleged exposures to the Listed Chemicals contained in the
Products sold by Defendant.

1 **5.2 Plaintiffs’ Public Release of Proposition 65 Claims**

2 In further consideration of the promises and agreements herein contained, Plaintiffs on
3 behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or
4 assignees, and in the interest of the general public in California, hereby waive all rights to institute
5 or participate in, directly or indirectly, any form of legal action and release Defendant and
6 Releasees from all claims including, without limitation, all actions and causes of action, in law or
7 in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
8 expenses including, but not limited to, investigation fees, expert fees, and attorneys’ fees—
9 exclusive of fees and costs on appeal – arising under Proposition 65 with respect to lead and
10 DEHP in handbag handles and DEHP in handbags sold by Defendant (collectively “Claims”).
11 This release is specifically limited to those Claims arising under Proposition 65 that were brought
12 or could have been brought by Plaintiffs with respect to the Listed Chemicals contained in the
13 Products sold by Defendant.

14 **5.3 Plaintiffs’ Individual Release of Claims**

15 Plaintiffs also, in their individual capacity only and not in their representative capacity,
16 provide a release herein which shall be effective as a full and final accord and satisfaction, as a bar
17 to all Claims, liabilities and demands of Plaintiffs of any nature, character, or kind, whether known
18 or unknown, suspected or unsuspected, arising out of alleged or actual exposures to the Listed
19 Chemicals contained in the Products manufactured, distributed, or sold by Defendant.

20 **5.4 Defendant’s Release of Plaintiffs**

21 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
22 successors, and/or assignees, hereby waives any and all claims against Plaintiffs and their
23 attorneys and other representatives for any and all actions taken or statements made (or those that
24 could have been taken or made) by Plaintiffs and their attorneys and other representatives, whether
25 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in
26 this matter or with respect to the Products.

1 **6. COURT APPROVAL; DISMISSAL OF JO-ANN STORES**

2 This Consent Judgment is not effective until it is approved and entered by the Court and, in
3 the event Pacific has made all payments required by this Consent Judgment, shall be null and void if
4 for any reason it is not approved and entered within eighteen months after it has been fully executed
5 by all parties, in which event, any monies that have been paid by Pacific shall be returned. The
6 Parties further agree and understand that, upon the Court’s approval and entry of this Consent
7 Judgment and the expiration of any applicable appeal period, Plaintiffs will file a request for
8 dismissal without prejudice as to defendant Jo-Ann Stores.

9 **7. SEVERABILITY**

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

13 **8. GOVERNING LAW**

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

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant to
22 this Consent Judgment shall be in writing and served by: (i) personal delivery; (ii) first-class,
23 registered, or certified mail, return receipt requested; or (iii) overnight courier, on any party by the
24 other party at the following addresses:
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1 For Pacific:

2 Seth Richards, President and CEO
3 Pacific Connections, Inc.
4 2001 T.W. Alexander Drive
5 P.O. Box 13925
6 Durham, NC 27709

For Plaintiffs:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

7 With a copy to:

8 Rudy A. Dermesropian, Esq.
9 Ballon, Stoll, Bader & Nadler, PC
10 729 Seventh Avenue, 17th Floor
11 New York, NY 100119

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

14 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or portable
16 document format (“pdf”) signature, each of which shall be deemed an original and all of which,
17 when taken together, shall constitute one and the same document. A facsimile or pdf signature shall
18 be as valid as the original.

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

20 Plaintiffs and their attorneys agree to comply with the reporting form requirements
21 referenced in California Health & Safety Code § 25249.7(f).

22 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

23 Plaintiffs and Pacific and their respective counsel agree to mutually employ their “best
24 efforts” to support the entry of this agreement as a Consent Judgment and obtain judicial approval
25 of this settlement in a timely manner. The parties acknowledge that, pursuant to California Health &
26 Safety Code § 25249.7, a noticed motion is required to obtain judicial approval and entry of this
27 Consent Judgment by the Court, which motion Plaintiffs shall draft and file, and Pacific shall join.
28 If any third party objects to the motion, Plaintiffs and Pacific shall work together to file a joint reply
and appear at any hearing before the Court. This provision is a material component of the Consent
Judgment and shall be treated as such in the event of a breach. If the Superior Court does not grant

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the motion to approve this Consent Judgment, and if the parties choose not to pursue a modified Consent Judgment within 30 days after the Court's denial of the motion, Plaintiffs will return all payments made pursuant to this Consent Judgment to counsel for Pacific.

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:

AGREED TO:

APPROVED
By Tony Held at 9:26 am, Sep 30, 2011

Date: _____

Date: 09/27/11

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

By: [Signature]
Defendant, Pacific Connections, Inc.

AGREED TO:

Date: 9-30-11

By: [Signature]
Plaintiff, Russell Brimer