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Clifford A. Chanler, State Bar No. 135534  
Brian C. Johnson, State Bar No. 235965  
Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,  
Plaintiff,  
v.  
SKY HIGH INTERNATIONAL, L.L.C.;  
KMART CORPORATION; and DOES 1-150,  
inclusive,  
Defendants.

Case No. CGC-10-501866

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E., and Sky High International, L.L.C.**

3             This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr.  
4 Held”) and Sky High International, L.L.C. (“Sky High”), with Dr. Held and Sky High collectively  
5 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 Defendant**

11            Plaintiff alleges, and has reason to believe, that Sky High employs ten or more persons and is  
12 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Dr. Held alleges that Sky High has sold in the State of California vinyl magnets and  
16 bookmarks containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition  
17 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.  
18 DEHP is also referred to herein as the “Listed Chemical.”

19            **1.5 Product Description**

20            The products that are covered by this Consent Judgment are defined as follows: (a) vinyl  
21 book marks containing the Listed Chemical including, but not limited to, *7UP Die Cut PVC*  
22 *Bookmark (#8 01714 64042 7)*; and (b) vinyl magnets containing the Listed Chemical including, but  
23 not limited to, *Hershey’s 2 Pack Magnets (#8 01714 36043 1)*. All such items shall be referred to  
24 herein as the “Products.”

25            **1.6 Notice of Violation**

26            On May 7, 2010, Dr. Held served Sky High and various public enforcement agencies with a  
27 document entitled “60-Day Notice of Violation” (“Notice”) that provided Sky High and such public  
28

1 enforcers with notice that alleged that Sky High was in violation of Proposition 65 for failing to warn  
2 consumers and customers that the Products exposed users in California to DEHP.

3 **1.7 Complaint**

4 On July 23, 2010, Dr. Held, acting in the interest of the general public in California, filed the  
5 instant action in the San Francisco County Superior Court (“Complaint”), naming Sky High as a  
6 defendant and alleging violations of Proposition 65 by Sky High based on the alleged exposures to  
7 DEHP contained in the Products it manufactured, distributed, and/or offered for sale in California.

8 **1.8 No Admission**

9 Sky High denies the material, factual, and legal allegations contained in Dr. Held’s Notice and  
10 in the Complaint, and maintains that all products that it has sold in California, including the Products,  
11 have been and are in compliance with all laws. Sky High further specifically disputes the fact that it  
12 employs ten or more persons and is a person in the course of doing business within the meaning of  
13 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Sky High of  
14 any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Consent  
15 Judgment constitute or be construed as an admission by Sky High of any fact, finding, conclusion,  
16 issue of law, or violation of law, the same being specifically denied by Sky High. However, this  
17 section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Sky High  
18 under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction  
21 over Sky High as to the allegations contained in the Complaint, that venue is proper in the City and  
22 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of  
23 this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean January 20,  
26 2011.

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

2 **2.1 Reformulated Products**

3 “Reformulated Products” are defined as those Products containing DEHP in concentrations of  
4 no more than than 0.1 percent (1,000 parts per million) when analyzed pursuant to any methodology  
5 utilized by Environmental Protection Agency Testing Methodologies 3580A and 8270C or any other  
6 testing protocol utilized by federal or state agencies for the purpose of determining DEHP content in a  
7 solid substance.

8 **2.2 Product Warnings**

9 Commencing on the Effective Date, Sky High shall, for all Products that are not Reformulated  
10 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b).

11 Each warning shall be prominently placed with such conspicuousness as compared with other words,  
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
13 individual under customary conditions before purchase or use. Each warning shall be provided in a  
14 manner such that the consumer or user understands to which *specific* Product the warning applies, so  
15 as to minimize the risk of consumer confusion.

16 **(a) Retail Store Sales.**

17 **(i) Product Labeling.** Sky High may affix a warning to the packaging,  
18 labeling, or directly on each Product sold in retail outlets in California by Sky High or any person  
19 selling its Products, that states:

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

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

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

1 Where more than one Product is sold in proximity to other like items or to those that do not require a  
2 warning (e.g., Reformulated Products as defined in Section 2.1), the following statement  
3 must be used:<sup>1</sup>

4           **WARNING:** The following products contain DEHP, a  
5                           phthalate chemical known to the State of  
6                           California to cause birth defects and other  
7                           reproductive harm:

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

9           **(b) Mail Order Catalog and Internet Sales.** In the event that Sky High sells  
10 Products via mail order catalog or internet to customers located in California after the Effective Date  
11 that are not Reformulated Products, Sky High shall provide a warning for Products sold via mail  
12 order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the  
13 website. Warnings given in the mail order catalog or on the website shall identify the *specific*  
14 Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

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

23           Where it is impracticable to provide the warning on the same page and in the same location as  
24 the display and/or description of the Product, Sky High may utilize a designated symbol to cross  
25 reference the applicable warning and shall define the term “designated symbol” with the following  
26 language on the inside of the front cover of the catalog or on the same page as any order form for the  
27 Product(s):

28           **WARNING:** Certain products identified with this symbol  
                          ▼ and offered for sale in this catalog contain

<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 DEHP, a phthalate chemical known to the  
2 State of California to cause birth defects and  
other reproductive harm.

3 The designated symbol must appear on the same page and in close proximity to the display and/or  
4 description of the Product. On each page where the designated symbol appears, Sky High must  
5 provide a header or footer directing the consumer to the warning language and definition of the  
6 designated symbol.

7 If Sky High elects to provide warnings in the mail order catalog, then the warnings must be  
8 included in all catalogs offering to sell one or more Products printed after the Effective Date.

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

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

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

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

### 25 3. MONETARY PAYMENTS

#### 26 3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

27 Pursuant to California Health & Safety Code §25249.7(b), Sky High shall pay a total civil  
28 penalty of \$15,000 in settlement of all of the claims alleged in the Notice and Complaint. The  
penalty amount was determined according to the factors set forth in California Health & Safety Code

1 § 25249.7(b)(2), including, without limitation, the nature and extent of the violation, the economic  
2 effect of the penalty on the violator, and whether the violator took good faith measures to comply  
3 with Proposition 65 and the time such measures were taken.

4 **3.1.1 Initial Civil Penalty**

5 In settlement of all the claims referred to in this Consent Judgment and alleged in the  
6 Notice and Complaint, Sky High shall pay an Initial Civil Penalty of \$6,000 to be apportioned in  
7 accordance with California Health & Safety Code §§ 25249.12 (c)(1) and (d), with seventy-five  
8 percent of these funds remitted to the State of California's Office of Environmental Health Hazard  
9 Assessment ("OEHHA") and the remaining twenty-five percent of the penalty paid to Dr. Held. Sky  
10 High shall issue two checks for the penalty payment: (a) one made payable to "The Chanler Group in  
11 Trust for OEHHA" in the amount of \$4,500.00; and (b) one check to "The Chanler Group in Trust for  
12 Anthony Held" in the amount of \$1,500.00.

13 The payment of the Initial Civil Penalty shall be delivered within ten days of the Effective  
14 Date, to the following address:

15 The Chanler Group  
16 Attn: Proposition 65 Controller  
17 2560 Ninth Street  
18 Parker Plaza, Suite 214  
19 Berkeley, CA 94710

20 Two 1099 forms shall be provide for the above payments to: (a) OEHHA, P.O. Box 4010,  
21 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose tax information shall be  
22 provided within three days of payment delivery.

23 **3.1.2 Final Civil Penalty; Waiver Upon Certification**

24 Sky High shall pay a Final Civil Penalty of \$9,000 on March 31, 2011. However, as  
25 an incentive to achieve one-hundred percent reformulation of the Products, Dr. Held agrees that the  
26 Final Civil Penalty shall be waived in its entirety upon certification in writing, by an officer of Sky  
27 High that it, as of April 1, 2011, will only distribute, ship, sell, or offer for sale in California  
28 Reformulated Products. The written certification of reformulation must be received by The Chanler  
Group on or before March 31, 2011.

1 The Final Civil Penalty shall be allocated between Dr. Held and OEHHA according to  
2 California Health & Safety Code §§ 25249.12 (c)(1) and (d). Payment of the Final Civil Penalty shall  
3 be in the form of two checks made out as follows: (a) "The Chanler Group in trust Anthony Held" for  
4 the sum of \$2,250; and (b) "The Chanler Group in Trust for OEHHA" for the sum of \$6,750. Tax  
5 information for both Dr. Held and OEHHA shall be provided according section 3.1.1 above.  
6 Payment of the Final Civil Penalty shall be delivered to The Chanler Group at the address provided in  
7 Section 3.1.1 on or before April 1, 2011.

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

9 **4.1 Attorney Fees and Costs.**

10 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this  
12 fee issue to be resolved after the material terms of the agreement had been settled. Sky High then  
13 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
14 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.  
15 Held and his counsel under general contract principles and the private attorney general doctrine  
16 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
17 execution of this agreement. Sky High, on behalf of itself and those in its chain of distribution, shall  
18 reimburse Dr. Held and his counsel a total of \$30,000 for fees and costs incurred as a result of  
19 investigating, bringing this matter to Sky High's attention, and litigating and negotiating a settlement  
20 in the public interest. A separate 1099 for fees and costs shall be provided (EIN: 94-3171522); and  
21 the check, made payable to "The Chanler Group", shall be delivered within ten days of the Effective  
22 Date.

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

28 **5. RELEASE OF ALL CLAIMS**

**5.1 Dr. Held's Release of Sky High**

In further consideration of the promises and agreements herein contained, and for the  
payments to be made pursuant to Sections 3.1 and 4.1, 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, causes of action, suits,  
4 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but  
5 not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether  
6 known or unknown, fixed or contingent, at law or in equity (collectively "Claims"), against Sky High  
7 and each of its past and current downstream distributors, wholesalers, licensors, licensees,  
8 auctioneers, retailers (including, but not limited to, Kmart Corporation) franchisees, dealers,  
9 customers, owners, purchasers, users, parent companies, corporate affiliates, and subsidiaries, and  
10 their respective past and current officers, directors, principals, partners, members, attorneys,  
11 representatives, shareholders, agents, and employees, and sister and parent entities (collectively  
12 "Releasees"). This release is limited to those claims that arise under Proposition 65, as such claims  
13 relate to Sky High's alleged failure to warn about exposures to or identification of DEHP contained  
14 in the Products.

#### 15 **5.2 Sky High Release of Dr. Held**

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

#### 21 **6. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
23 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
24 has been fully executed by all parties, in which event any monies that have been provided to Dr.  
25 Held, or his counsel pursuant to Sections 3.1 and/or 4.1 shall be refunded within fifteen days of  
26 receiving written notice from Sky High that the one-year period has expired. The Parties further  
27 agree and understand that, on the Court's approval and entry of this Consent Judgment, counsel for  
28 Dr. Held will prepare and file a request for dismissal as to defendant Kmart Corporation.

1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California  
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is  
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Sky High may  
9 provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Sky High from any  
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **9. NOTICES**

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

18 For Sky High:

19 Solomon Hedaya, President  
20 Sky High International, L.L.C.  
21 1400 Broadway, Suite 700  
22 New York, NY 10018

23 With a copy to:

24 Jeffrey S. Dweck, Esq.  
25 The Law Firm of Jeffrey S. Dweck, P.C.  
26 100 West 33<sup>rd</sup> Street, Suite 1017  
27 New York, NY 10001

28 For Dr. Held:

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

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

18 **13. MODIFICATION**

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

22 **14. AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment and have read, understood,  
24 and agree to all of the terms and conditions hereof.

25 **AGREED TO:**

**APPROVED**

*By Anthony Held at 3:26 pm, Jan 19, 2011*

26 Date: \_\_\_\_\_

27 By: \_\_\_\_\_

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

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Solomon Hedaya, President  
SKY HIGH INTERNATIONAL, L.L.C.

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17 the required motion for judicial approval.

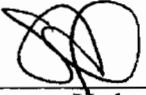
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24 ~~and agree to all of the terms and conditions hereof.~~

25 **AGREED TO:**  
26 Date: \_\_\_\_\_  
27 By: \_\_\_\_\_  
28 ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**  
Date: 1-21-11  
By:   
Solomon Hedaya, President  
SKY HIGH INTERNATIONAL, L.L.C.