

1 Christopher M. Martin, State Bar No. 186021  
THE CHANLER GROUP  
2 2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
3 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
4

Attorneys for Plaintiff  
5 ANTHONY E. HELD, PH.D., P.E.

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF ALAMEDA  
9 UNLIMITED CIVIL JURISDICTION  
10

11 ANTHONY E. HELD, PH.D., P.E.,

12 Plaintiff,

13 v.

14 TWOROGER ASSOCIATES, LTD.; and  
15 DOES 1 through 150, inclusive,

16 Defendants.

Case No. RG10551576

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT TWOROGER LLC**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Tworoger Associates, Ltd.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4 P.E., (hereinafter “Dr. Held” or “Plaintiff”) and defendant Tworoger LLC (hereinafter  
5 “Tworoger” or “Defendant”), with Plaintiff and Defendant collectively referred to as the  
6 “Parties” and each individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Tworoger manufactured, distributed and/or sold eyewear cases  
17 containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without the  
18 requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as known to the  
19 State of California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: eyewear  
22 cases containing DEHP, including, but not limited to the *Kirkland Signature Sunglasses for*  
23 *Active Lifestyles, Item 453479 (8 03926 32281 8)* and which Defendant manufactured,  
24 distributed, and/or sold in the State of California. All such eyewear cases containing DEHP are  
25 referred to hereinafter as the “Products.”

26 **1.6 Notices of Violation**

27 On June 3, 2010, Dr. Held served Tworoger and various public enforcement agencies  
28 with a document entitled “60-Day Notice of Violation” (hereinafter “Notice”) that provided

1 Tworoger and public enforcers with notice of alleged violations of California Health & Safety  
2 Code §25249.6 for failing to warn consumers that the Products exposed users in California to  
3 DEHP.

4 **1.7 Complaint**

5 On December 15, 2010, Dr. Held, who was and is acting in the interest of the general  
6 public in California, filed a complaint (hereinafter “Complaint” or “Action”) in the Superior  
7 Court in and for the County of Alameda against Tworoger Associates, LTD., and Does 1  
8 through 150, alleging violations of California Health & Safety Code §25249.6 based on the  
9 alleged exposures to DEHP contained in the Products.

10 **1.8 No Admission**

11 Tworoger denies the material factual and legal allegations contained in Dr. Held's Notice  
12 and Complaint, and maintains that all Products sold and distributed in California have been and  
13 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
14 admission by Tworoger of any fact, finding, issue of law, or violation of law; nor shall  
15 compliance with this Consent Judgment constitute or be construed as an admission by Tworoger  
16 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied  
17 by Tworoger. However, this section shall not diminish or otherwise affect Tworoger’s  
18 obligations, responsibilities, and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean September  
26 1, 2011.

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

2 **2.1 Reformulation Standards and Commitment**

3 For purposes of this Consent Judgment, Reformulated Products are defined as those  
4 Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in  
5 each accessible component when analyzed pursuant to U.S. Environmental Protection Agency  
6 testing methodologies 3580A and 8720C or any other methodology utilized by federal or state  
7 agencies for the purpose of determining DEHP content in a solid substance. As of the Effective  
8 Date, Tworoger shall only acquire Products for distribution or sale in California that qualify as  
9 Reformulated Products.

10 **2.2 Warnings Commitment** Except with respect to Reformulated Products,  
11 Tworoger shall provide clear and reasonable warnings with respect to all Products shipped into  
12 California from and after the Effective Date for resale to California citizens, as follows:

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

14 (i) **Product Labeling.** Tworoger may affix a warning to the  
15 packaging, labeling, or directly on each Product sold in retail outlets in California by Tworoger or  
16 its agents, containing the following language:

17 **WARNING:** This eyewear case contains phthalate  
18 chemicals, including DEHP, known to  
19 the State of California to cause birth  
defects or other reproductive harm.

20 **Point-of-Sale Warnings.** Alternatively, Tworoger may provide warning  
21 signs in the form below to its customers in California with instructions to post the warnings in  
22 close proximity to the point of display of the Products.

23 **WARNING:** This eyewear case contains phthalate  
24 chemicals, including DEHP, known to the  
25 State of California to cause birth  
26 defects or other reproductive harm.

1 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

2 In settlement of all the claims referred to in this Consent Judgment against it, Tworoger  
3 shall make a civil penalty payment of \$8,000 to be apportioned in accordance with California  
4 Health & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to the State of  
5 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these  
6 penalty monies remitted to Dr. Held, as provided by California Health & Safety Code §  
7 25249.12(d). Tworoger shall issue two separate checks for the penalty payment: (a) one check  
8 made payable to "The Chanler Group in Trust For the Office of Environmental Health Hazard  
9 Assessment" in the amount of \$6,000, representing 75% of the total penalty; and (b) one check to  
10 "The Chanler Group in Trust for Dr. Held" in the amount of \$2,000, representing 25% of the  
11 total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall  
12 be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
13 Sacramento, CA, 95814 (EIN: 68-0284486) in the amount of \$6,000. The second 1099 shall be  
14 issued to Dr. Held in the amount of \$2,000, whose address and tax identification number shall be  
15 furnished, upon request, at least five (5) calendar days before the payment is due. The payments  
16 shall be delivered to Dr. Held's counsel on or before June 15, 2011, at the following address:

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

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

23 **4.1 Attorney Fees and Costs**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
25 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this fee  
26 issue to be resolved until after the other material terms of the agreement had been settled.  
27 Tworoger then expressed a desire to resolve the fee and cost issue shortly after the other  
28 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
the compensation due to Dr. Held and his counsel under general contract principles and the

1 private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5,  
2 for all work performed through the mutual execution of this agreement. Tworoger shall  
3 reimburse Dr. Held and his counsel \$32,000 for fees and costs incurred as a result of  
4 investigating, bringing this matter to Tworoger's attention, and negotiating a settlement in the  
5 public interest. This figure includes Dr. Held's future fees and costs, including attorney's fees, to  
6 be incurred seeking judicial approval of this Consent Judgment as well as any other legal work  
7 performed after the execution of this Consent Judgment incurred in an effort to obtain finality of  
8 the case. However, in the event a third party were to appeal the entry of this Consent Judgment,  
9 Dr. Held and his counsel shall be entitled to seek their reasonable attorney's fees and costs  
10 associated with all appellate work defending the entry of judgment pursuant to CCP §1021.5. The  
11 Chanler Group will cause a completed W-9 Form with respect to itself to be provided to  
12 Tworoger or Tworoger's counsel prior to payment. Tworoger shall issue a single 1099 to The  
13 Chanler Group for all payments pursuant to this Section. Tworoger shall issue a total of four  
14 checks for Held's fees and costs paid in four monthly installments. Payments shall be made as  
15 follows: (a) on or before June 15, 2011, Tworoger shall issue a check payable to "The Chanler  
16 Group" in the amount of \$2,000; (b) on or before July 16, 2011, Tworoger shall issue a check  
17 payable to "The Chanler Group" in the amount of \$10,000; (c) on or before August 15, 2011,  
18 Tworoger shall issue a check payable to "The Chanler Group" in the amount of \$10,000; and (d)  
19 on or before September 15, 2011, Tworoger shall issue a check payable to the "The Chanler  
20 Group" in the amount of \$10,000.

21 Each of the four payments for attorneys' fees shall be delivered to 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

27 **5. CLAIMS COVERED AND RELEASED**

28 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.** This  
Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf of himself

1 and the public, and Defendant, of any violation of Proposition 65 that was or could have been  
2 asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under  
3 common ownership, directors, officers, employees, attorneys, and each entity to whom  
4 Defendant directly or indirectly distributes or sells Products, including but not limited to  
5 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
6 licensors, and licensees (“Releasees”), based on their failure to warn about alleged exposures to  
7 the Listed Chemical contained in the Products that were sold by Defendant.

8         **5.2 Plaintiff’s Public Release of Proposition 65 Claims.** In further consideration of  
9 the promises and agreements herein contained, Plaintiff on behalf of himself, his past and  
10 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
11 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
12 form of legal action and releases all claims, including, without limitation, all actions, and causes  
13 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
14 penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and  
15 attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under  
16 Proposition 65 with respect to the Listed Chemical in the Products sold by Defendant  
17 (collectively “claims”), against Defendant and Releasees.

18         **5.3 Plaintiff’s Individual Release of Claims.** Plaintiff also, in his individual  
19 capacity only and *not* in his representative capacity, provides a release herein which shall be  
20 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
21 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of  
22 plaintiff of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
23 limited to and arising out of alleged or actual exposures to the Listed Chemical in the Products  
24 manufactured, distributed or sold by Defendant.

25         **5.4 Defendant’s Release of Plaintiff.** Defendant on behalf of itself, its past and  
26 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and  
27 all claims against Plaintiff, his attorneys and other representatives, for any and all actions taken  
28 or statements made (or those that could have been taken or made) by Plaintiff and his attorneys

1 and other representatives, whether in the course of investigating claims or otherwise seeking to  
2 enforce Proposition 65 against it in this matter with respect to the Products.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the court and  
5 shall be null and void if, for any reason, it is not approved and entered by the court within one  
6 year after it has been fully executed by all Parties, in which event any monies that have been  
7 provided to Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be  
8 refunded within fifteen (15) days after receiving written notice from Tworoger that the one-year  
9 period has expired.

10 **7. SEVERABILITY**

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

14 **8. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of  
16 California and apply within the State of California. In the event that Proposition 65 is repealed  
17 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
18 Tworoger shall provide written notice to Dr. Held of any asserted change in the law, and shall  
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
20 that, the Products are so affected.

21 **9. NOTICES**

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

26 ///

27 ///

28 ///



1 To Tworoger:

2 E. Cooke Rand  
3 RAND ROSENZWEIG RADLEY & GORDON LLP  
4 800 Third Avenue, 26<sup>th</sup> Floor  
5 New York, NY 10022

6 With a copy to:

7 Alessandro Lanaro, President  
8 Tworoger Associates, Ltd.  
9 594 Broadway, Suite 801  
10 New York, NY 10012

11 To Dr. Held:

12 Proposition 65 Coordinator  
13 THE CHANLER GROUP  
14 2560 Ninth Street  
15 Parker Plaza, Suite 214  
16 Berkeley, CA 94710-2565

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

19 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

26 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

27 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts  
28 to support the entry of this agreement as a Consent Judgment and obtain approval of the  
Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
California Health and Safety Code section 25249.7, a noticed motion is required to obtain  
judicial approval of this Consent Judgment, which Held shall file, and which Tworoger shall not  
oppose. If any third party objection to the noticed motion is filed, Held and Tworoger shall

1 work together to file a joint reply and appear at any hearing before the Court. If the Superior  
2 Court does not approve the motion to approve this Consent Judgment, and the Parties choose  
3 not to pursue a modified Consent Judgment within 30 days of said denial, or in the event that  
4 the Superior Court approve this Consent Judgment and any person successfully appeals that  
5 approval, all payments made pursuant to this Consent Judgment will be returned to Tworoger.

6 **13. MODIFICATION**

7 This Consent Judgment may be modified only: (1) by written agreement of the parties  
8 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
9 motion of any party and entry of a modified Consent Judgment by the court. The Attorney  
10 General shall be served with notice of any proposed modification to this Consent Judgment at  
11 least fifteen (15) days in advance of its consideration by the Court. Dr. Held shall be entitled to  
12 his reasonable fees and costs incurred in the modification process under CCP §1021.5 if  
13 Tworoger seeks to modify the terms of this Consent Judgment.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

6 **AGREED TO:**

7 Date: 6/3/11

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

9 By:   
10 Plaintiff ANTHONY E. HELD

11 By: \_\_\_\_\_  
12 Defendant TWOROGER ASSOCIATES,  
13 LTD.

14 **APPROVED AS TO FORM:**

15 **APPROVED AS TO FORM:**

16 Date: \_\_\_\_\_  
17 THE CHANLER GROUP

18 Date: \_\_\_\_\_  
19 RAND ROSENZWEIG RADLEY &  
20 GORDON LLP

21 By: \_\_\_\_\_  
22 Christopher M. Martin  
23 Attorneys for Plaintiff  
24 ANTHONY E. HELD

25 By: \_\_\_\_\_  
26 E. Cooke Rand  
27 Attorneys for Defendant  
28 TWOROGER ASSOCIATES, LTD.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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:**

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

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

By: \_\_\_\_\_  
Plaintiff ANTHONY E. HELD


By: \_\_\_\_\_  
Defendant TWOROGER ASSOCIATES, LTD.

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

Date: June 3, 2011  
THE CHANLER GROUP

Date: \_\_\_\_\_  
RAND ROSENZWEIG RADLEY & GORDON LLP

By:   
Christopher M. Martin  
Attorneys for Plaintiff  
ANTHONY E. HELD

By: \_\_\_\_\_  
E. Cooke Rand  
Attorneys for Defendant  
TWOROGER ASSOCIATES, LTD.

1 **14. AUTHORIZATION**

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

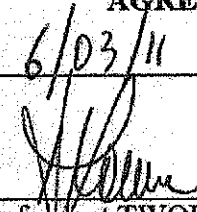
5 **AGREED TO:**

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

7  
8 By: \_\_\_\_\_  
9 Plaintiff ANTHONY E. HELD

6 **AGREED TO:**

6 Date: 6/03/11

7  
8 By:   
9 Defendant TWOROGER ASSOCIATES,  
LTD.

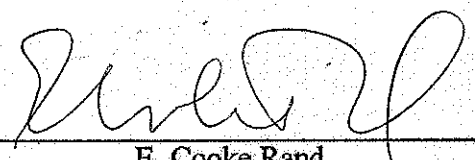
11 **APPROVED AS TO FORM:**

12 Date: \_\_\_\_\_  
13 THE CHANLER GROUP

14  
15 By: \_\_\_\_\_  
16 Christopher M. Martin  
17 Attorneys for Plaintiff  
18 ANTHONY E. HELD

11 **APPROVED AS TO FORM:**

12 Date: 6/3/2011  
13 RAND ROSENZWEIG RADLEY &  
14 GORDON LLP

15 By:   
16 E. Cooke Rand  
17 Attorneys for Defendant  
18 TWOROGER ASSOCIATES, LTD.

28