

1 Troy C. Bailey, State Bar No. 277424  
Jennifer Henry, State Bar No. 208221  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
5

6 Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

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

13 Plaintiff,

14 v.

15 AVENUES IN LEATHER, INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.  
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Case No. RG11564508

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held and Avenues In Leather, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held” or  
4 “Plaintiff”) and Avenues In Leather, Inc. (“Avenues” or “Defendant”), with Dr. Held and  
5 Defendant 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 to  
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that Defendant has manufactured, distributed, and/or offered for sale in California  
16 computer cases containing one or more of di(2-ethylhexyl)phthalate (“DEHP”) and Di-n-butyl  
17 phthalate (“DBP”) and card files containing DEHP, without the requisite Proposition 65 warnings.  
18 DEHP and DBP are listed pursuant to Proposition 65 as chemicals known to the State of California  
19 to cause birth defects and other reproductive harm (hereinafter the “Listed Chemicals”).

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are: *Avenues The Calisto Computer*  
22 *Case RA-2170-02 (#0 92837 21702 7)* containing one or more of the Listed Chemicals and sold by  
23 Defendant in California (“Computer Case Products”); and card files containing DEHP and sold by  
24 Defendant in California, including but not limited to: *Avenues Professional Card File 320 Capacity,*  
25 *DA-3456-02 (#0 92837 34562 1)* and *Avenues Professional Card File 96 Capacity, DA-3453-02 (#0*  
26 *92837 34532 4)* (“Card File Products”). Computer Case Products and Card File Products are  
27 hereinafter referred to as the “Products.”  
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1           **1.6 Notices of Violation**

2           On December 21, 2010, Dr. Held served Defendant and various public enforcement agencies  
3 with a document entitled 60-Day Notice of Violation (“Notice”) that provided Defendant and such  
4 public enforcers with notice that alleged that Defendant were in violation of Proposition 65 for  
5 failing to warn consumers and customers that their Computer Case Products exposed users in  
6 California to DEHP. On or about April 25, 2012, Dr. Held served Defendant and various public  
7 enforcement agencies with a Supplemental Notice that provided Defendant and such public  
8 enforcers with notice that alleged Defendant was in violation of Proposition 65 for failing to warn  
9 consumers and customers that the Computer Case Products exposed users in California to DEHP  
10 and/or DBP and the Card File Products exposed users to DEHP (collectively “Notices.”).

11           **1.7 Complaint**

12           On March 8, 2011, Dr. Held filed a complaint in the Alameda County Superior Court (the  
13 “Complaint”), naming Avenues as a defendant and alleging violations of Proposition 65 based on  
14 the allegations in the Notice. Following the expiration of more than 66 days after Plaintiff’s service  
15 of the Supplemental Notice, and upon entry of this Consent Judgment, the Complaint shall be  
16 deemed amended nunc pro tunc to include the violations of Proposition 65 alleged in the  
17 Supplemental Notice with respect to the Products (the Card File Products and DBP in the Computer  
18 Case Products).

19           **1.8 No Admission**

20           Nothing in this Consent Judgment shall be construed as an admission by Defendant of any  
21 fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent  
22 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion,  
23 issue of law, or violation of law, such being specifically denied by Defendant. However, this  
24 Section shall not diminish or otherwise affect Defendant’s obligations, responsibilities and duties  
25 under this Consent Judgment.

26           **1.9 Consent to Jurisdiction**

27           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in

1 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of  
2 this Consent Judgment, pursuant to California Code of Civil Procedure §664.6, as a full and binding  
3 resolution of all claims which were or could have been raised in the Complaint against Defendant  
4 based on the facts alleged therein and in the Notice.

5 **1.10 Effective Date**

6 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 20, 2012.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Reformulation Standards**

9 As of the Effective Date, Avenues shall not ship, sell, or offer to be shipped for sale in  
10 California any Product unless it is a “Reformulated Product;” provided, however, that shipment,  
11 sale or offer for sale in California on or before the Effective Date by Defendant or its customers of  
12 Products, which are on the date hereof, (i) in inventory, (ii) in production or (iii) on route, shall not  
13 constitute a violation of this Consent Judgment. Reformulated Products are defined as those  
14 Products which yield less than 1,000 parts per million (“ppm”) of each of DEHP and/or DBP in  
15 each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and  
16 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of  
17 determining DEHP and/or DBP content in a solid substance.

18 However Avenues may ship, sell or offer to be shipped for sale in California a Product that  
19 does not meet the DEHP Standard, if the following conditions are met: (i) Defendant has  
20 determined that no Reformulated Product or equivalent DEHP-free substitute product is “reasonably  
21 commercially available”; (ii) the Product is not primarily intended for use by individuals twelve  
22 years of age or younger; and (iii) Avenues complies with the warning requirements set forth in  
23 Section 2.2 below. For purposes of this Section 2.1 “reasonable commercial availability” shall  
24 include consideration of the following factors: availability and supply of a Reformulated Product or  
25 equivalent DEHP-free product; cost of the Reformulated Product or equivalent DEHP-free product;  
26 performance characteristics of the Reformulated Product or equivalent DEHP-free product,  
27 including but not limited to performance, safety, and stability.

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1           **2.2    Product Warnings**

2           Commencing on the Effective Date, Avenues shall, for all Products other than Reformulated  
3 Products sold in California, provided the conditions in Section 2.1 are met, provide clear and  
4 reasonable warnings as set forth below. Each warning shall be prominently placed with such  
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
6 to be read and understood by an ordinary individual under customary conditions before purchase or  
7 use. Each warning shall be provided in a manner such that the consumer or user understands to  
8 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For  
9 Products containing DEHP and/or DBP, Avenues shall use the following warning language:

10                           **WARNING: This product contains one or more phthalate chemicals**  
11                                   **known to the state of California to cause birth defects**  
   **and other reproductive harm.**

12           **3.    MONETARY PAYMENTS**

13           **3.1    Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

14           Defendant shall make payments totaling \$30,000, to be apportioned in accordance with  
15 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds  
16 earmarked for the State of California’s Office of Environmental Health Hazard Assessment  
17 (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Dr. Held. These  
18 payments shall be made as follows:

- 19           a)     \$10,000 on or before July 20, 2012;
- 20           b)     \$10,000 on or before September 30, 2012; and
- 21           c)     \$10,000 on or before October 30, 2012.

22           **3.2    Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

23           On or before September 30, 2012, Defendant shall pay a second civil penalty of \$60,000. As  
24 an incentive to reformulate the Products, however, the second civil penalty shall be waived in its  
25 entirety if an Officer of Defendant certifies in writing that as of September 30, 2012, Defendant will  
26 sell, ship and offer for sale in California only Reformulated Products. Such certification must be  
27 received by The Chanler Group on or before September 30, 2012. The second civil penalty payment  
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1 shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with  
2 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Dr. Held.

### 3 **3.2 Reimbursement of Plaintiff's Fees and Costs**

4 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
6 issue to be resolved after the material terms of the agreement had been settled. Defendant then  
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
8 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.  
9 Held and his counsel under general contract principles and the private attorney general doctrine  
10 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,  
11 except fees that may be incurred on appeal. Under these legal principles, Defendant shall pay the  
12 amount of \$30,000 for fees and costs incurred investigating, litigating and enforcing this matter,  
13 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the  
14 Court's approval of this Consent Judgment in the public interest. This payment shall be made as  
15 follows:

- 16 a) \$10,000 on or before July 20, 2012;
- 17 b) \$10,000 on or before September 30, 2012; and
- 18 c) \$10,000 on or before October 30, 2012.

### 19 **3.3 Payment Procedures**

20 **3.3.1** All payments made under this Consent Judgment shall be held in trust until  
21 the Court approves the Consent Judgment. The Parties acknowledge that Dr. Held gave Defendant  
22 the option of depositing the funds into its attorney's trust account, but that Defendant elected to have  
23 the funds held in trust by The Chanler Group. The settlement funds shall be made payable by  
24 checks, as follows:

- 25 (a) "The Chanler Group in Trust for OEHHA" in an amount equal to 75%  
26 of the civil penalty;
- 27 (b) "The Chanler Group in Trust for Dr. Held" in an amount equal to 25%  
28 of the penalty; and

1 (c) "The Chanler Group in Trust" in the amount of \$30,000.

2 **3.3.2** After the Consent Judgment has been approved, Defendant shall issue a 1099  
3 form to each of the following entities:

4 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
5 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties  
6 payable to OEHHA;

7 (b) Dr. Held, whose address and tax identification number shall be  
8 furnished upon request, for the civil penalties payable to Dr. Held; and

9 (c) The Chanler Group (EIN: 94-3171522) for the amount of \$30,000.

10 **3.3.3** All payments transmitted to the Chanler Group shall be delivered to the  
11 following address:

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

#### 15 **4. CLAIMS COVERED AND RELEASED**

##### 16 **4.1 Plaintiff's Public Release of Proposition 65 Claims.**

17 Plaintiff acting on his own behalf and in the public interest releases Avenues from all claims  
18 for violations of Proposition 65 up through the Effective Date based on exposure to the Listed  
19 Chemicals from the Products as set forth in the Notice. Compliance with the terms of this Consent  
20 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed  
21 Chemicals from the Products as set forth in the Notice.

##### 22 **4.2 Plaintiff's Individual Release of Claims.**

23 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides a  
24 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
25 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
26 liabilities and demands of Plaintiff of any nature, character or kind, whether known or unknown,  
27 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed  
28 Chemicals in the Products manufactured, distributed or sold by Defendant.

1           **4.3 Defendant’s Release of Plaintiff.**

2           Defendant on behalf of itself, its past and current agents, representatives, attorneys,  
3 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and  
4 other representatives, for any and all actions taken or statements made (or those that could have been  
5 taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of  
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
7 respect to the Products.

8           **5. COURT APPROVAL**

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

14           **6. SEVERABILITY**

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

18           **7. GOVERNING LAW**

19           The terms of this Consent Judgment shall be governed by the laws of the State of California  
20 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
21 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant  
22 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
23 extent that, the Products are so affected.

24           **8. NOTICES**

25           Unless specified herein, all correspondence and notices required to be provided pursuant to  
26 this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,  
27 registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the  
28 other party at the following addresses:



1 For Avenues in Leather, Inc.:

2 Attn: Clinton McCord, Esq.  
3 Edwards Wildman Palmer LLP  
4 660 Newport Center Drive  
Suite 900  
Newport Beach, CA 92660

5 For Dr. Held:

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

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

11 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,  
13 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
14 one and the same document.

15 **10. POST EXECUTION ACTIVITIES**

16 Dr. Held agrees to comply with the reporting form requirements referenced in California  
17 Health & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to  
18 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval  
19 of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Defendant and  
20 their respective counsel agree to mutually employ their best efforts to support the entry of this  
21 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
22 timely manner. For purposes of this section, best efforts shall include, at a minimum, cooperating  
23 on the drafting and filing of any papers in support of the required motion for judicial approval.

24 **11. MODIFICATION**

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

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**12. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

By: Anthony E. Held  
ANTHONY E. HELD, PH.D., P.E.

By: OTNEIL SHOR  
OTNEIL SHOR, PRESIDENT  
AVENUES IN LEATHER, INC.

Date: 7/13/12

Date: 7/19/12