

1 Steven S. Sayad, State Bar No. 104866  
2 Laurence D. Haveson, State Bar No. 152631  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED JURISDICTION

14 ANTHONY E. HELD, Ph.D., P.E., ) Case No. CGC-11-510332  
15 Plaintiff, )  
16 v. ) **[PROPOSED] CONSENT**  
17 ALLSTAR MARKETING GROUP, LLC, and ) **JUDGMENT**  
18 DOES 1-600, inclusive, )  
19 Defendants. )  
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1       **1.       INTRODUCTION**

2               **1.1       The Parties**

3               This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,  
4 P.E. (“Held” or “Plaintiff”) and Defendant Allstar Marketing Group, LLC (“Allstar”), with  
5 Plaintiff and Defendant collectively referred to as the “Parties.”

6               **1.2       Plaintiff**

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

10              **1.3       Allstar**

11              Allstar employs 10 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 &  
13 Safety Code § 25249.6 *et seq.* (Proposition 65).

14              **1.4       General Allegations**

15              Held alleges that Allstar has manufactured, distributed and/or sold, in the State of  
16 California, Buxton cell phone wallets that expose users to benzyl butyl phthalate (“BBP”), di-n-  
17 butyl phthalate (“DBP”), di(2-ethylhexyl)phthalate (“DEHP”) and lead, without first providing a  
18 “clear and reasonable warning” under Proposition 65. BBP, DBP, DEHP, and lead are listed  
19 pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects  
20 and other reproductive harm. Allstar denies Held’s allegations.

21              **1.5       Notices of Violation**

22              1.5.1 On December 30, 2010, Held served Allstar and various public  
23 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided  
24 public enforcers and Allstar with notice of alleged violations of Health & Safety Code § 25249.6  
25 for failing to warn consumers that wallets, including, but not limited to, *Design by Buxton Cell*  
26 *Phone Wallet, model number BX131124 (#7 40275 00230 8)*, that Allstar manufactured,  
27 distributed and/or sold exposed users in California to DEHP.

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1           1.5.2 On September 20, 2011, Held served Allstar and various public  
2 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" that  
3 provided public enforcers and Allstar with notice of alleged violations of Health & Safety Code §  
4 25249.6 for failing to warn consumers that wallets, including, but not limited to, *Design by*  
5 *Buxton Cell Phone Wallet, model number BX131124 (#7 40275 00230 8)*, that Allstar  
6 manufactured, distributed and/or sold exposed users in California to lead, BBP and DBP.

7           **1.6 Complaint**

8           On April 19, 2011, Held, acting, in the interest of the general public in California, filed a  
9 complaint in the Superior Court in and for the County of San Francisco, alleging violations of  
10 Health & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in cases for  
11 mobile electronic devices, manufactured, distributed and/or sold by Allstar ("Complaint"). In the  
12 event that no public enforcer undertakes diligent prosecution of the allegations set forth in the  
13 Supplemental Notice prior to the expiration of the 60-Day Notice period, the Complaint shall be  
14 deemed amended to include said allegations. This action shall hereinafter be referred to as the  
15 "Action."

16           **1.7 No Admission**

17           The Parties enter into this Consent Judgment as a full and final settlement of all claims  
18 that were raised in the Complaint or that could have been raised in the Complaint, arising out of  
19 the facts or conduct alleged therein. By execution of this Consent Judgment and agreeing to  
20 comply with its terms, Allstar does not admit any facts or conclusions of law, including, but not  
21 limited to, any facts or conclusions of law suggesting or demonstrating any violations of  
22 Proposition 65 or any other statutory, common law, or equitable requirements relating to BBP,  
23 DBP, DEHP and/or lead in Covered Products. This Consent Judgment is the product of  
24 negotiation and compromise and is accepted by Allstar for purposes of settling, compromising,  
25 and resolving issues disputed in this Action. However, this section shall not diminish or  
26 otherwise affect the obligations, responsibilities, and duties of Allstar under this Consent  
27 Judgment.

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1           **1.8 Consent to Jurisdiction**

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

6           **2. DEFINITIONS**

7           2.1 The term “Covered Products” means Buxton Cell Phone Wallets manufactured,  
8 distributed, and/or sold by Allstar.

9           2.2 The term “Compliance Date” means the date this Consent Judgment is approved  
10 by the Court.

11           **3. INJUNCTIVE RELIEF**

12           3.1 Commencing on the Compliance Date, Allstar shall not sell, ship, or offer for sale  
13 in California any Covered Product containing BBP, DBP, or DEHP in concentrations exceeding  
14 0.1 percent by weight (1,000 parts per million (“ppm”)) when analyzed pursuant to any  
15 methodology utilized by federal or state agencies for the purpose of determining phthalate content  
16 in a solid substance.

17           3.2 Commencing on the Compliance Date, Allstar shall not sell, ship, or offer for sale  
18 in California any Covered Product containing more than 100 ppm of lead when analyzed pursuant  
19 to EPA testing methodologies 30508 and 6010B, or equivalent methodologies utilized by federal  
20 or state agencies for the purpose of determining lead content in a solid substance.

21           **4. ENFORCEMENT OF CONSENT JUDGMENT**

22           4.1 **General Enforcement Provisions.** Any Party may, by motion or application for  
23 an order to show cause before the San Francisco Superior Court, enforce the terms and conditions  
24 contained in this Consent Judgment. A Party may file such a motion or application only after that  
25 Party first provides 30 days notice to the Party allegedly failing to comply with the terms and  
26 conditions of this Consent Judgment and attempts to resolve such Party’s failure to comply in an  
27 open and good faith manner for a period of no less than 30 days.

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1     **5.     MONETARY PAYMENTS**

2             **5.1     Payments Pursuant to Health & Safety Code § 25249.7(b)**

3             Allstar shall pay \$30,000 in civil penalties, of which \$20,000 shall be automatically  
4     waived in exchange for Allstar’s agreement to sell only Covered Products that comply with  
5     Sections 3.1 and 3.2 in the future. The remaining \$10,000 is to be apportioned in accordance with  
6     California Health & Safety Code §25249.12 (c) & (d), with 75% of these funds remitted to the  
7     State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
8     remaining 25% of the amount remitted to Anthony E. Held, Ph.D., P.E. as provided by California  
9     Health & Safety Code §25249.12(d). Allstar shall issue two separate checks for the payment: (a)  
10    one check made payable to “The Chanler Group in trust For Office of Environmental Health  
11    Hazard Assessment” in the amount of \$7,500, representing 75% of the total payment; and (b) one  
12    check to “The Chanler Group in trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$2,500,  
13    representing 25% of the total payment. Two separate 1099s shall be issued for the above  
14    payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)  
15    Anthony E. Held, Ph.D., P.E., whose information shall be provided five calendar days before the  
16    payment is due.

17             Payment shall be delivered to Held’s counsel within two business days of the Compliance  
18    Date, at the following address:

19             The Chanler Group  
20             Attn: Proposition 65 Controller  
21             2560 Ninth Street  
22             Parker Plaza, Suite 214  
23             Berkeley, CA 94710-2565

24             **5.2     Attorney Fees and Costs**

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

1 to Held and his counsel under general contract principles and the private attorney general doctrine  
2 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through  
3 the mutual execution of this agreement and obtaining court approval thereof. Allstar, on behalf of  
4 itself and those in its chain of distribution, shall reimburse Held and his counsel a total of \$45,000  
5 for fees and costs incurred and to be incurred as a result of investigating, bringing this matter to  
6 Allstar's attention, and litigating and negotiating a settlement in the public interest. Allstar shall  
7 issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to  
8 "The Chanler Group" to be delivered within two business days of the Compliance Date, to the  
9 following address:

10 The Chanler Group  
11 Attn: Proposition 65 Controller  
12 2560 Ninth Street  
13 Parker Plaza, Suite 214  
14 Berkeley, CA 94710-2565

## 13 **6. CLAIMS COVERED AND RELEASED**

14 6.1 This Consent Judgment is a full, final, and binding resolution between Held, in the  
15 public interest, and Allstar and its parents, shareholders, divisions, subdivisions, subsidiaries,  
16 partners, affiliates, and sister companies and their successors and assigns ("Defendant  
17 Releasees"), and their distributors, wholesalers, customers, retailers, franchisees, cooperative  
18 members, licensors, and licensees, and any other person or entity to whom they directly or  
19 indirectly distribute or sell Covered Products, including, but not limited to, Buxton Acquisition  
20 Co. ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or  
21 could have been asserted in the public interest against Allstar, Defendant Releasees, and  
22 Downstream Defendant Releasees regarding the failure to warn about exposure to BBP, DBP,  
23 DEHP and/or lead in Covered Products.

24 6.2 Held on behalf of himself, his past and current agents, representatives, attorneys,  
25 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
26 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
27 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,

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1 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
2 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether  
3 known or unknown, fixed or contingent (collectively "Claims"), against Allstar, Defendant  
4 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65  
5 regarding the failure to warn about exposure to BBP, DBP, DEHP and/or lead in Covered  
6 Products.

7           6.3     Held also, in his individual capacity only and *not* in his representative capacity,  
8 provides a general release herein which shall be effective as a full and final accord and  
9 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
10 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known  
11 or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint. Held  
12 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides  
13 as follows:

14           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
15           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
16           FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
              KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
              HER SETTLEMENT WITH THE DEBTOR.

17 Held, in his individual capacity only and *not* in his representative capacity, expressly waives and  
18 relinquishes any and all rights and benefits which he may have under, or which may be conferred  
19 on him by the provisions of Section 1542 of the California Civil Code as well as under any other  
20 state or federal statute or common law principle of similar effect, to the fullest extent that he may  
21 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such  
22 intention, the release hereby given shall be and remain in effect as a full and complete release  
23 notwithstanding the discovery or existence of any such additional or different claims or facts  
24 arising out of the released matters.

25           6.4     Allstar waives any and all Claims against Held, his attorneys, and other  
26 representatives for any and all actions taken or statements made (or those that could have been  
27 taken or made) by Held and his attorneys and other representatives, whether in the course of

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1 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
2 matter, and/or with respect to the Covered Products.

3           6.5 Allstar also provides a general release herein which shall be effective as a full and  
4 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
5 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character  
6 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the  
7 Action. Allstar acknowledges that it is familiar with Section 1542 of the California Civil Code,  
8 which provides as follows:

9           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
10           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
11           FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
12           KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
13           HER SETTLEMENT WITH THE DEBTOR.

14 Allstar expressly waives and relinquishes any and all rights and benefits which it may have under,  
15 or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as  
16 well as under any other state or federal statute or common law principle of similar effect, to the  
17 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.  
18 In furtherance of such intention, the release hereby given shall be and remain in effect as a full  
19 and complete release notwithstanding the discovery or existence of any such additional or  
20 different claims or facts arising out of the released matters.

21 **7. COURT APPROVAL**

22           7.1 By this Consent Judgment and upon its approval, the Parties waive their right to  
23 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,  
24 including all pleading, procedural, and discovery orders.

25           7.2 Held shall file a motion seeking approval of this Consent Judgment pursuant to  
26 California Health & Safety Code § 25249.7(f), and Allstar shall support the entry of such  
27 judgment.

28           7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment  
and any and all prior agreements between the parties merged herein shall terminate and become



1 null and void, and the Action shall revert to the status that existed prior to the execution date of  
2 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
3 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
4 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
5 Action, or in any other proceeding; and (c) the parties agree to meet and confer to determine  
6 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7 **8. GOVERNING LAW**

8 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
9 California, and shall apply only to Covered Products offered for sale in the State of California. In  
10 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law  
11 generally, or as to the Products, then Allstar may provide written notice to Held of any asserted  
12 change in the law, and shall have no further obligations pursuant to this Consent Judgment with  
13 respect to, and to the extent that, the Products are so affected.

14 8.2 The Parties, including their counsel, have participated in the preparation of this  
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
18 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
19 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
20 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
21 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
22 this regard, the Parties hereby waive California Civil Code § 1654.

23 **9. NOTICES**

24 9.1 Unless specified herein, all correspondence and notices required to be provided  
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)  
26 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any  
27 Party by the other Party at the following addresses:

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To Allstar:

Jennifer De Marco  
General Counsel  
Allstar Marketing Group, LLC  
2 Skyline Drive  
Hawthorne, NY 10532

With a copy to:

Jeffrey B. Margulies, Esq.  
Fulbright & Jaworski LLP  
555 South Flower Street  
41st Floor  
Los Angeles, California 90071

To Held:

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

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

**10. MODIFICATION**

10.1 **Modification.** This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

10.2 **Subsequent Legislation.** If, subsequent to the Compliance Date, legislation or regulation is adopted that addresses the BBP, DBP, DEHP, and/or lead content of Covered Products sold in California, any Party shall be entitled to request that the Court modify the reformulation standards and contained in Sections 3.1 and/or 3.2 of this Consent Judgment for good cause shown.

10.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

1 **11. ENTIRE AGREEMENT**

2 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to all issues and disputes arising from the allegations in the Notice and  
4 the Supplemental Notice and/or the Complaint, existing as of the Compliance Date, between Held  
5 and Allstar, and any and all prior discussions, negotiations, commitments, or understandings  
6 related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or  
7 termination of this Consent Judgment shall be binding unless executed in writing by the Party to  
8 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed  
9 or shall constitute a waiver of any of the other provisions hereof whether or not similar. If,  
10 subsequent to the execution of this Consent Judgment, any of the provisions of this Consent  
11 Judgment are held by a court to be unenforceable or invalid, the validity of the enforceable  
12 provisions remaining shall not be adversely affected.

13 **12. RETENTION OF JURISDICTION**

14 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
15 Consent Judgment.

16 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

17 13.1 This Consent Judgment may be executed in counterparts and by facsimile or  
18 portable document format (pdf), each of which shall be deemed an original, and all of which,  
19 when taken together, shall constitute one and the same document.

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**14. AUTHORIZATION**

14.1 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: September 20, 2011

Date: September \_\_, 2011

By: Anthony E. Held

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

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

Defendant Allstar Marketing Group, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By \_\_\_\_\_

Judge of the Superior Court

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**14. AUTHORIZATION**

14.1 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: September \_\_, 2011

Date: September 21, 2011

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

By: *Jennifer DeMarzo*

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

Defendant Allstar Marketing Group, Inc.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By \_\_\_\_\_

Judge of the Superior Court