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

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

13 Plaintiff,

14 v.

15 HEWLETT-PACKARD COMPANY; and
16 DOES 1-150, inclusive,

17 Defendants.

Case No. RG 11579604

[PROPOSED] CONSENT JUDGMENT

(Cal. Health & Saf. Code, § 25249.6 et seq.)

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held and Hewlett-Packard Company**

3 This Consent Judgment is entered into by and between Anthony E. Held (“Held”) and
4 Hewlett-Packard Company (“HP”), with Held and HP collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

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

9 **1.3 Defendant**

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

13 **1.4 General Allegations**

14 Held alleges that HP has manufactured, distributed, and/or offered for sale in California
15 briefcases for notebooks and computer cases with zipper pulls containing di(2-ethylhexyl)phthalate
16 (“DEHP”), butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate
17 (“DIDP”), and/or di-n-hexyl phthalate (“DnHP”) without the requisite Proposition 65 warnings.
18 DEHP, BBP, DBP, DIDP, and DnHP (the “Listed Chemicals”) are listed pursuant to Proposition 65
19 as chemicals known to the 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 briefcases for notebooks and
22 computer cases with zipper pulls containing one or more of the Listed Chemicals including, but not
23 limited to, the *HP EZ Check Briefcase, VE050AA* (#8 84962 19882 7), the *HP Basic Carrying Case,*
24 *AJ078AA* (#8 83585 30448 6), and the *HP Mini Sleeve, VX403 AA#ABL* (#8 84962 80166 6),
25 distributed or sold by HP, directly or through others, to consumers in California (“Products”). The
26 definition of “Products” specifically excludes products that are the subject of an independent
27 settlement agreement or consent judgment and for which HP has been released, such as the *Held v.*
28

1 *Aldo U.S., Inc. et al.*, San Francisco County Consolidated Case No. CGC-10-497729, in which
2 Targus Group International, Inc.; Targus Inc., suppliers to HP, participated.

3 **1.6 Notices of Violation**

4 On March 17, 2011, and again on September 19, 2011, Held served HP and various public
5 enforcement agencies with documents entitled 60-Day Notice of Violation (“Notices”) that
6 provided HP and such officials with notice that alleged that HP was in violation of Proposition 65
7 for failing to warn its direct customers and end users that its Products exposed users in California to
8 DEHP.

9 **1.7 Complaint**

10 On June 8, 2011, Held filed the instant action (“Complaint”), naming HP as a defendant and
11 alleging violations of Proposition 65 based on the allegations in the March 17, 2011, Notice. On
12 July 14, 2011, HP filed a general denial to the Complaint. On or about December 20, 2011, Held
13 shall file a first amended complaint incorporating the allegations contained in the September 19,
14 2011, Notice.

15 **1.8 No Admission**

16 HP denies the material factual and legal allegations contained in the Notices, and the First
17 Amended Complaint, and maintains that all products that it has sold in California, including the
18 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
19 be construed as an admission by HP of any fact, finding, conclusion of law, issue of law, or
20 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
21 admission by HP of any fact, finding, conclusion of law, issue of law, or violation of law, such
22 being specifically denied by HP. However, this Section shall not diminish or otherwise affect HP’s
23 obligations, responsibilities and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over HP as to the allegations contained in the First Amended Complaint, that venue is
27 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6,

1 as a full and binding resolution of all claims that were or could have been raised in the First
2 Amended Complaint against HP based on the facts alleged therein and in the Notices.

3 **2. INJUNCTIVE RELIEF**

4 **2.1 Implementation of the Phthalate Standard**

5 As of December 15, 2012, HP shall not ship, sell, distribute, or supply to an unaffiliated
6 third party any Product that will be sold or offered for sale to California consumers any Product
7 unless each accessible component (i.e., any component that can be touched, handled, or mouthed by
8 a person during reasonably foreseeable use) contains the Listed Chemicals each in concentrations
9 less than 1,000 parts per million of each Listed Chemical when analyzed pursuant to U.S.
10 Environmental Protection Agency sample preparation and test methodologies 3580A and 8270C
11 (“Phthalate Standard”).

12 The deadline for achieving the Phthalate Standard may be extended to December 15, 2013,
13 if each of the following conditions are met: (i) HP provides written notification on or before
14 December 1, 2012, to Held indicating its intent to exercise such election; and (ii) HP makes the
15 additional payment set forth in Section 3.1 below. The deadline for achieving the Phthalate
16 Standard may further be extended a second time, until December 15, 2014, if each of the following
17 conditions are met: (i) HP provides written notification on or before December 1, 2013, to Held
18 indicating its intent to exercise such election; and (ii) HP makes the additional payment set forth in
19 Section 3.1 below.

20 **2.2 Interim Product Warnings**

21 For all products manufactured on or after May 31, 2012, HP shall provide clear and
22 reasonable warnings, as set forth in this Section (“Phthalate Warning”), for each Product shipped to
23 or for ultimate sale to or use by California consumers that does not comply with the Phthalate
24 Standard. Each Phthalate Warning shall be prominently placed with such conspicuousness as
25 compared with other words, statements, designs, or devices as to render it likely to be read and
26 understood by an ordinary individual under customary conditions before purchase or use. Each
27 Phthalate Warning shall be provided in a manner such that the consumer understands to which
28 *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

1 **(a) Retail Store Sales.** HP shall affix (or cause to be affixed) a Phthalate Warning
2 to the packaging, labeling, or directly on each Product to be sold in retail outlets in California by HP
3 or any person selling the Products, that states:

4 **WARNING:** This product contains one or more phthalate
5 chemicals that are known to the State of
6 California to cause birth defects and other
7 reproductive harm.

8 **(b) Mail Order Catalog and Internet Sales.** In the event that HP sells Products
9 via mail order catalog and/or the Internet, to consumers located in California, HP shall provide a
10 Phthalate Warning for such Products sold via mail order catalog or the Internet to California
11 consumers: (1) in the mail order catalog; or (2) on the website. Phthalate Warnings given in the mail
12 order catalog or on the Internet shall identify the *specific* Product to which the Phthalate Warning
13 applies as further specified in Sections 2.3(b)(i) and (ii).

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

18 **WARNING:** This product contains one or more phthalate
19 chemicals that are known to the State of
20 California to cause birth defects and other
21 reproductive harm.

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

27 **WARNING:** Certain products identified with this symbol
28 ▼ and offered for sale in this catalog contain
 one or more phthalate chemicals that are
 known to the State of California to cause birth
 defects and other reproductive harm.

1 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Product. On each page where the designated symbol appears, there must be
3 provided a header or footer directing the consumer to the warning language and definition of the
4 designated symbol.

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

13 **WARNING:** This product contains one or more phthalate
14 chemicals that are known to the State of
15 California to cause birth defects and other
reproductive harm.

16 Alternatively, the designated symbol may appear adjacent to or immediately following the
17 display, description, or price of the Product for which a Phthalate Warning is being given, provided
18 that the following warning statement also appears elsewhere on the same Web page, as follows:

19 **WARNING:** Products identified on this page with the
20 following symbol ▼ contain one or more
21 phthalate chemicals that are known to the
State of California to cause birth defects and
other reproductive harm..

22 **2.3 Over Warning Prohibited**

23 HP shall not provide, nor require or request that any other party provide, a Phthalate Warning
24 described in Section 2.2 for any product it knows, or should know, does not contain the Listed
25 Chemicals or contains the Listed Chemicals in concentrations lower than the Phthalate Standard, nor
26 shall it require or request that any party to which it distributes, sells, or supplies Products do so. No
27 Phthalate Warning shall be applied to Products meeting the Phthalate Standard after the final elected
28 reformulation deadline set forth in Section 2.1.

1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 On or before December 30, 2011, HP shall make a payment of \$ 35,000 pursuant to Health
4 & Safety Code section 25249.7, subsection (b). Upon election pursuant to Section 2.2 to extend the
5 deadline by which all Products must meet the Phthalate Standard from December 15, 2012 until
6 December 15, 2013, HP shall pay a second civil penalty of \$ 30,000, to the Payment Address (set
7 forth in Section 3.3(c)). Upon election pursuant to Section 2.2 to extend the deadline by which all
8 Products must meet the Phthalate Standard a second time, from December 15, 2013 until December
9 15, 2014, HP shall pay a third civil penalty of \$ 60,000, to the Payment Address.

10 All civil penalty payments shall be apportioned in accordance with Health & Safety Code
11 section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of
12 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
13 25% of these penalty monies earmarked for Dr. Held.

14 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

15 The Parties have reached an accord on the compensation to be paid to Dr. Held and his
16 counsel, which Dr. Held asserts is appropriate under general contract principles and the private
17 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work
18 performed in this matter, except fees that may be incurred on appeal. HP shall pay \$ 65,000, on or
19 before December 30, 2011, for fees and costs incurred investigating, litigating and enforcing this
20 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
21 obtaining the Court’s approval of this Consent Judgment in the public interest.

22 **3.3 Payment Procedures**

23 **(a)** All payments made under this Consent Judgment shall be held in trust by the
24 Chanler Group until the Court approves the Consent Judgment. The settlement funds shall be made
25 payable by checks or wire transfers, as follows:

- 26 **(i)** “The Chanler Group in Trust for OEHHA” in an amount equal to 75%
27 of the civil penalty;

1 (ii) "The Chanler Group in Trust for Anthony E. Held" in an amount equal
2 to 25% of the penalty; and

3 (iii) "The Chanler Group in Trust" in the amount of \$ 65,000.

4 (b) After the Consent Judgment has been approved, HP shall issue a 1099 form to
5 each of the following entities:

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

9 (ii) Held, whose address and tax identification number shall be furnished
10 upon request, for the civil penalties payable to Held; and

11 (iii) The Chanler Group (EIN: 94-3171522) for the amount of \$ 65,000.

12 (c) All payments transmitted to the Chanler Group shall be delivered to the
13 following address:

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

19 or by wire transfer, instructions for which will be provided upon request.

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

22 This Consent Judgment is a full, final and binding resolution between Held, on behalf of
23 himself and the public, and HP, of any violation of Proposition 65 that was or could have been
24 asserted by Held against HP, its parents, subsidiaries, affiliated entities under common ownership,
25 directors, officers, employees, attorneys, and each entity to whom HP directly or indirectly distributes
26 or sells Products including, but not limited to, downstream distributors, wholesalers, customers,
27 retailers, franchisees, cooperative members, licensors, and licensees (together: "Releasees"), based on
28 their failure to warn about alleged or actual exposures to DEHP contained in the Products that were
sold by HP as alleged in the Notices.

1 **4.2 Held’s Public Release of Proposition 65 Claims**

2 In further consideration of the promises and agreements herein contained, Held on behalf of
3 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
4 the interest of the general public, hereby waives all rights to institute or participate in, directly or
5 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
6 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
7 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
8 attorneys’ fees, but exclusive of fees and costs on appeal) limited to and arising under Proposition 65
9 with respect to DEHP in the Products sold by HP (collectively “claims”), against HP and its
10 Releasees.

11 **4.3 Held’s Individual Release of Claims**

12 Held also, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
15 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
16 suspected or unsuspected, limited to and arising out of alleged or actual exposures to any or all of the
17 Listed Chemicals in the Products manufactured, distributed or sold by HP. Held acknowledges that
18 he is familiar with Section 1542 of the Civil Code of the State of California. Section 1542 provides
19 as follows:

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

25 Held, in his individual capacity only, and *not* in his representative capacity, on behalf of
26 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
27 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
28 him by, the provisions of Civil Code Section 1542 as well as under any other state or federal statute

1 or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights
2 or benefits pertaining to the presence of the Listed Chemicals in the Products (the “Released
3 Matters”). In furtherance of such intention, the release hereby given shall be and remain in effect as a
4 full and complete release notwithstanding the discovery or existence of any such additional or
5 different claims or facts arising out of the Released Matters.

6 **4.4 HP’s Release of Held**

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

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by all Parties, in which event any monies that have been provided to
17 Held or his counsel pursuant to Sections 3 above shall be refunded within fifteen (15) days after
18 receiving written notice from HP that the one-year period has expired.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California.

26 **8. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28 this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,

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11. 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.

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:

ANTHONY E. HELD

HEWLETT-PACKARD COMPANY

By: Anthony E Held
ANTHONY E. HELD

By: Scott Pappan
SCOTT PAPPAN, [title] Dir. PSG Accessories

Date: **APPROVED**
By Anthony Held at 8:16 am, Dec 16, 2011

Date: 12-21-11