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ANTHONY E. HELD, Ph.D., P.E.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, Ph.D., P.E.,
14 Plaintiff,
15 v.
16 MAGGY LONDON INTERNATIONAL,
LTD.; and DOES 1 through 150, inclusive,
17 Defendants.
18

Case No. CIV1201222

[PROPOSED] CONSENT JUDGMENT

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. ("Dr. Held" or "Plaintiff") and Maggy London International, Ltd. ("Maggy London" or
5 "Defendant"), with Dr. Held and Maggy London collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Maggy London employs 10 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,
13 California Health & Safety Code § 25249.6 et seq. (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that Maggy London has manufactured, distributed, sold, and/or offered
16 for sale in the state of California belts containing the phthalate chemical di(2-
17 ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive
19 harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: belts
22 containing DEHP, including, but not limited to, *London Times Dress with Belt, LT7740 (#7*
23 *21547 29297 9)*, manufactured, distributed, sold and/or offered for sale in California by Maggy
24 London, hereinafter the "Products."

25 **1.6 Notice of Violation**

26 On or about April 8, 2011, Dr. Held served Maggy London and various public
27 enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that
28 provided the recipients with notice of alleged violations of Proposition 65 by Maggy London for

1 failing to warn its customers and consumers in California that the Products it sold exposed users
2 to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
3 diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On March 13, 2012, Dr. Held, who was and is acting in the interest of the general public
6 in California, filed a complaint (hereinafter "Complaint" or "Action") in the Superior Court for
7 the County of Marin against Maggy London International, LTD. And Does 1 through 150,
8 alleging violations of Proposition 65 based on the alleged exposures to DEHP contained in the
9 Products.

10 **1.8 No Admission**

11 Maggy London denies the material factual and legal allegations contained in Moore's
12 Notice and Complaint, and maintains that all Products sold and distributed in California have
13 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
14 an admission by Maggy London 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 Maggy
16 London of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
17 denied by Maggy London. However, this section shall not diminish or otherwise affect Maggy
18 London's 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 Maggy London as to the allegations contained in the Complaint, that venue is
22 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
23 provisions of this Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 Commencing on March 31, 2012 (the "Effective Date"), Maggy London shall
26 manufacture, distribute, sell and/or offer for sale in California only Products that are "Phthalate
27 Free." For purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products
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1 containing less than or equal to 1,000 parts per million (0.1%) of DEHP when analyzed pursuant
2 to Environmental Protection Agency testing methodologies 3580A and 8270C.

3 **3. MONETARY PAYMENTS**

4 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

5 Maggy London shall make a payment of \$8,000 in combined penalty payments and
6 credits in civil penalties. For its cooperation in the settlement process and its commitment to
7 reformulate the Products to be Phthalate Free pursuant to Section 2 above, Dr. Held shall provide
8 Maggy London with a penalty credit of \$3,000. Thereafter, the remaining amount of \$5,000
9 will be paid by Maggy London and be apportioned in accordance with Health & Safety Code
10 section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the state of
11 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
12 25% of these penalty monies earmarked for Dr. Held.

13 **3.2 Reimbursement of Dr. Held's Fees and Costs**

14 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
16 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
17 Maggy London then expressed a desire to resolve the fee and cost issue shortly after the other
18 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
19 the compensation due to Dr. Held and his counsel under general contract principles and the
20 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
21 for all work performed in this matter, except fees that may be incurred on appeal. Under these
22 legal principles, Maggy London shall pay the amount of \$32,000 for fees and costs incurred
23 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
24 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
25 Judgment in the public interest.

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1 **3.3 Payment Procedures**

2 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
3 shall be delivered on or before March 31, 2012 to either The Chanler Group or the attorney of
4 record for Maggy London and shall be held in trust pending the Court's approval of this Consent
5 Judgment.

6 Payments delivered to The Chanler Group shall be made payable, as follows:

- 7 (i) One check made payable to "The Chanler Group in Trust for
8 OEHHA" in the amount of \$3,750;
9 (ii) One check made payable to "The Chanler Group in Trust for
10 Anthony E. Held" in the amount of \$1,250; and
11 (iii) One check made payable to "The Chanler Group in Trust" in the
12 amount of \$32,000.

13 Payments delivered to Baker & McKenzie LLP shall be made payable, as follows:

- 14 (i) One check made payable to Baker & McKenzie LLP in Trust for
15 OEHHA" in the amount of \$3,750;
16 (ii) One check made payable to "Baker & McKenzie LLP in Trust for
17 Anthony E. Held in the amount of \$1,250; and
18 (iii) One check made payable to "Baker & McKenzie LLP in Trust for
19 The Chanler Group" in the amount of \$32,000.

20 If Maggy London elects to deliver payments to its attorney of record, such attorney of
21 record shall: (a) confirm in writing within five days of receipt that the funds have been deposited
22 in a trust account; and (b) within two days of the date of the hearing on which the Court approves
23 the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as
24 follows:

- 25 (i) One check made payable to "The Chanler Group in Trust for
26 OEHHA" in the amount of \$3,750;
27 (ii) One check made payable to "The Chanler Group in Trust for
28 Anthony E. Held" in the amount of \$1,250; and

1 (iii) One check made payable to "The Chanler Group" in the amount of
2 \$32,000.

3 **3.3.2 Issuance of 1099 Forms:** After the Consent Judgment has been approved
4 and the settlement funds have been transmitted to Dr. Held's counsel, Maggy London shall issue
5 three separate 1099 forms, as follows:

6 (i) The first 1099 shall be issued to the Office of Environmental
7 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
8 95814 (EIN: 68-0284486) in the amount of \$3,750;

9 (ii) The second 1099 shall be issued to Anthony E. Held in the amount
10 of \$1,250, whose address and tax identification number shall be
11 furnished upon request; and

12 (iii) The third 1099 shall be issued to The Chanler Group (EIN: 94-
13 3171522) in the amount of \$32,000.

14 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
15 to the following payment address:

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

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

23 Dr. Held acting on his own behalf and in the public interest releases Maggy London from
24 all claims for violations of Proposition 65 up through the Effective Date based on exposure to
25 DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent
26 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
27 Products as set forth in the Notice.

28 **4.2 Dr. Held's Individual Release of Claims**

Dr. Held also, in his individual capacity only and *not* in his representative capacity,
provides a release herein which shall be effective as a full and final accord and satisfaction, as a

1 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
2 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
3 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
4 DEHP in the Products manufactured, distributed or sold by Maggy London.

5 **4.3 Maggy London's Release of Plaintiff**

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

12 **5. SEVERABILITY**

13 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
14 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
15 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
16 provision is not severable from the remainder of the Consent Judgment.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one
20 year after it has been fully executed by all Parties, in which event any monies that have been
21 provided to Dr. Held or his counsel pursuant to Section 3 above, shall be refunded withing
22 fifteen (15) days after receiving written demand from Maggy London for return of such funds.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of
25 California and apply within the state of California. In the event that Proposition 65 is repealed,
26 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to DEHP
27 and/or the Products, then Maggy London shall provide written notice to Dr. Held of any asserted
28 change in the law, and shall have no further obligations pursuant to this Consent Judgment with

1 respect to, and to the extent that, the Products are so affected.

2 **8. NOTICES**

3 When any Party is entitled to receive any notice under this Consent Judgment, the notice
4 shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail)
5 return receipt requested; or (ii) overnight courier on any Party by the other Party at the following
6 addresses:

7 To Maggy London:

8 Larry Lefkowitz, President
9 Maggy London International, Ltd.
10 530 7th Ave, 16th Floor
11 New York, NY 10018

12 With copy to:

13 Sigurd Sorenson
14 Baker & McKenzie LLP
15 1114 Avenue of the Americas
16 New York, NY 10036

17 To Dr. Held:

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

23 Any Party may modify the person and address to whom the notice is to be sent by
24 sending each other Party notice by certified mail and/or other verifiable form of written
25 communication.

26 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

27 Dr. Held agrees to comply with the reporting form requirements referenced, in California
28 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

10. 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.

1 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
3 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
4 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
5 Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval
6 of this Consent Judgment, which Dr. Held shall file, and which Maggy London shall not oppose.
7 If any third party objection to the noticed motion is filed, Dr. Held and Maggy London shall work
8 together to file a joint reply and appear at any hearing before the Court. If the Superior Court
9 does not approve the motion to approve this Consent Judgment, and the Parties choose not to
10 pursue a modified Consent Judgment within 30 days of said denial, or in the event that the
11 Superior Court approves this Consent Judgment and any person successfully appeals that
12 approval, all payments made pursuant to this Consent Judgment will be returned to Maggy
13 London.

14 **12. ENTIRE AGREEMENT**

15 This Consent Judgment contains the sole and entire agreement and understanding of the
16 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
20 to exist or to bind any of the parties.

21 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile or portable
23 document format (.pdf), each of which shall be deemed an original, and all of which, when taken
24 together, shall constitute one and the same document. A facsimile or .pdf signature shall be as
25 valid as the original.

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14. 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:

APPROVED
Date: *By Anthony Held at 8:27 am, Mar 29, 2012*

AGREED TO:

Date: _____

By: *Anthony E. Held*
Plaintiff Anthony E. Held, Ph.D., P.E.

By: _____
Bob Burg, President
Maggy London International, Ltd.

1 **14. AUTHORIZATION**

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

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AGREED TO:

Date: _____

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

AGREED TO:

Date: _____

By: 
Larry Lefkowitz, President
Maggy London International, Ltd.