

1 Josh Voorhees, State Bar No. 241436
Rachel S. Doughty, State Bar No. 255904
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 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 TWO'S COMPANY, INC.; and DOES 1-150,
inclusive,

16 Defendants.
17

Case No. CGC-11-516586

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Two's Company, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, PH.D., P.E.
4 ("Dr. Held" or "Plaintiff") and Two's Company, Inc. ("Two's" or "Defendant"), with Held and
5 Two's 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
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that Two's has manufactured, distributed, and/or offered for sale in
16 California cosmetic cases/bags containing di(2-ethylhexyl)phthalate ("DEHP"), luggage tags
17 containing DEHP, and luggage tags containing lead without the requisite Proposition 65
18 warnings. DEHP and lead are listed pursuant to Proposition 65 as chemicals known to the State
19 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 the *Mindy Weiss Bridesmaid*
22 *Cosmetic Bag #8850 (#0 19218 08850 2)* ("Mindy Weiss Bag") distributed or sold by Two's,
23 directly or through others, to consumers in California, and the *Hide & Seek Luggage Tag,*
24 *#41169-20 (#0 19218 72065 5)* ("Hide & Seek Tag"), distributed or sold by Two's, directly or
25 through others, to consumers in California ("Products").

26 **1.6 Notices of Violation**

27 On or about April 8, 2011, Dr. Held served Two's and various public enforcement
28 agencies with a document entitled 60-Day Notice of Violation that provided Two's and such

1 officials with notice that alleged that Two's was in violation of Proposition 65 for failing to warn
2 its direct customers and end users that its cosmetic cases/bags exposed users in California to
3 DEHP. On or about September 19, 2011, Dr. Held served Two's and various public enforcement
4 agencies with a Supplemental 60-Day Notice of Violation that provided Two's and such officials
5 with notice that alleged that Two's was in violation of Proposition 65 for failing to warn its direct
6 customers and end users that its cosmetic cases/bags and luggage tags exposed users in California
7 to DEHP and that its luggage tags exposed users in California to lead. The April 8, 2011 60-Day
8 Notice of Violation and the September 19, 2011 Supplemental 60-Day Notice of violation will
9 hereinafter be referred to as the "Notices."

10 **1.7 Complaint**

11 On December 14, 2011, Dr. Held filed a complaint in the Superior Court in and for the
12 County of San Francisco against Two's and Does 1 through 150 (the "Complaint" or "Action"),
13 alleging violations of Proposition 65, based on the alleged exposures to DEHP contained in
14 certain cosmetic cases/bags and luggage tags sold by Two's, and to lead in certain luggage tags
15 sold by Two's.

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Two's as to the allegations contained in the Complaint, that venue is proper in
28 the County of San Francisco, and that this Court has jurisdiction to enter and enforce the

1 provisions of this Consent Judgment, pursuant to California Code of Civil Procedure section
2 664.6, as a full and binding resolution of all claims that were or could have been raised in the
3 Complaint against Two's based on the facts alleged therein and in the Notices.

4 **1.10 Effective Date**

5 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 15,
6 2012.

7 **2. INJUNCTIVE RELIEF**

8 As of the Effective Date, Two's shall not ship, sell, distribute, or supply to an unaffiliated
9 third party the Mindy Weiss Bag or the Hide & Seek Tag if either Product will be sold or offered
10 for sale to California consumers unless each accessible component (i.e., any component that can
11 be touched, handled, or mouthed by a person during reasonably foreseeable use) of any such
12 Product contains DEHP in concentrations less than 1,000 parts per million when analyzed
13 pursuant to U.S. Environmental Protection Agency sample preparation and test methodologies
14 3580A and 8270C ("DEHP Standard"), and contains no more than 50 parts per million of lead
15 when analyzed pursuant to EPA testing methodologies 3050B and/or 6010B, and 1.0 microgram
16 when analyzed pursuant to the NIOSH 9100 testing protocol.

17 **3. MONETARY PAYMENTS**

18 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

19 On or before the Effective Date, Two's shall make a payment of \$3,500 to be apportioned
20 in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75%
21 of these funds earmarked for the State of California's Office of Environmental Health Hazard
22 Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked for Dr. Held.
23 This penalty reflects a credit of \$6,500 in light of Two's injunctive commitments in Section 2.

24 **3.2 Reimbursement of Plaintiff's Fees and Costs**

25 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
26 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
27 this fee issue to be resolved after the material terms of the agreement had been settled. Two's
28 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms

1 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
2 due to Dr. Held and his counsel under general contract principles and the private attorney general
3 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
4 this matter, except fees that may be incurred on appeal. Under these legal principles, Two's shall
5 pay the amount of \$19,000 for fees and costs incurred investigating, litigating and enforcing this
6 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
7 obtaining the Court's approval of this Consent Judgment in the public interest.

8 **3.3 Payment Procedures**

9 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
10 delivered on or before the Effective Date to either The Chanler Group or the attorney of record for
11 the Two's, and shall be held in trust pending the Court's approval of this Consent Judgment.

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

- 13 (a) One check made payable to "The Chanler Group in Trust for
14 OEHHA" in the amount of \$2,625;
- 15 (b) One check made payable to "The Chanler Group in Trust for Held"
16 in the amount of \$875; and
- 17 (c) One check made payable to "The Chanler Group in Trust" in the
18 amount of \$19,000.

19 Payments delivered to Dongell Lawrence Finney LLP shall be made payable, as
20 follows:

- 21 (a) One check made payable to "Dongell Lawrence Finney LLP in Trust
22 for OEHHA" in the amount of \$2,625;
- 23 (b) One check made payable to "Dongell Lawrence Finney LLP in Trust
24 for Held" in the amount of \$875; and
- 25 (c) One check made payable to "Dongell Lawrence Finney LLP in Trust
26 for The Chanler Group" in the amount of \$19,000.

27 If Two's elects to deliver payments to its attorney of record, the attorney of record shall
28 confirm, in writing within five days of deposit, that the funds have been deposited in a trust

1 account.

2 Within two days of the date of the hearing on which the Court approves the Consent
3 Judgment, the payments being held in trust by the attorney of record for Two's shall be delivered
4 to The Chanler Group in three separate checks payable, as follows:

- 5 (a) One check made payable to "The Chanler Group in Trust for
6 OEHHA" in the amount of \$2,625;
7 (b) One check to "The Chanler Group in Trust for Held" in the amount
8 of \$875; and
9 (c) One check to "The Chanler Group" in the amount of \$19,000.

10 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
11 and the settlement funds have been transmitted to plaintiff's counsel, Two's shall issue three
12 separate 1099 forms, as follows:

- 13 (a) The first 1099 shall be issued to the Office of Environmental Health
14 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
15 68-0284486) in the amount of \$2,625;
16 (b) The second 1099 shall be issued to Dr. Held in the amount of \$875,
17 whose address and tax identification number shall be furnished
18 upon request; and
19 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
20 3171522) in the amount of \$19,000.

21 **3.3.3** All payments transmitted to the Chanler Group shall be delivered to the
22 following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
28

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Plaintiff's Release of Proposition 65 Claims**

3 Dr. Held acting on his own behalf and in the public interest releases Two's from all claims
4 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
5 the Mindy Weiss Bag and DEHP and lead from the Hide & Seek Tag. Compliance with the terms
6 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
7 DEHP and/or lead from the respective Products.

8 **4.2 Defendant's Release of Plaintiff**

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

15 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

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

28

1 **8. NOTICES**

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

6 For Two's:

7 Courtney Ross-Tait, Esq.
8 Dongell Lawrence Finney LLP
9 707 Wilshire Boulevard, 45th Floor
Los Angeles, CA 90017-3609

10 For Dr. Held:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION**

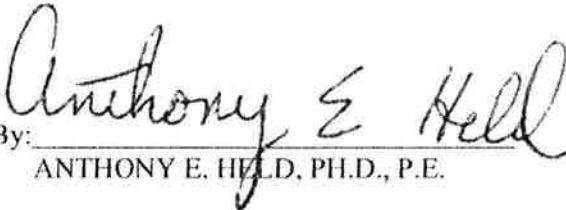
2 This Consent Judgment may be modified only: (1) by written agreement of the Parties
3 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful
4 motion of any party and entry of a modified consent judgment by the Court.

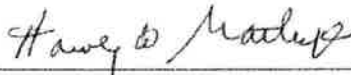
5 **12. AUTHORIZATION**

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

8 **AGREED TO:**

AGREED TO:

9
10 
11 By: _____
12 ANTHONY E. HELD, PH.D., P.E.

By: 
13 TWO'S COMPANY, INC.
14 HARVEY W. MATLICK
15 TREASURER

16 Date: 06/12/2012 _____

17 Date: 6/12/12 _____

18
19
20
21
22
23
24
25
26
27
28