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

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

15 Plaintiff,

16 v.

17 THE KITCHEN COLLECTION, LLC, *et al.*,

18 Defendants.

19 Case No. CGC-11-514769

20 **[PROPOSED] CONSENT JUDGMENT**

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and The Kitchen Collection, LLC**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (“Held” or “Plaintiff”) and The Kitchen Collection, LLC (“TKC” or “Defendant”), with Held and
5 TKC 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 of
8 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 TKC employs ten 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, Health and Safety Code
13 section 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that TKC has manufactured, imported, distributed, sold and/or offered for sale
16 certain children’s bags that contain di(2-ethylhexyl)phthalate (“DEHP”), without the requisite
17 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are plastic bags for children’s
21 products and which contain DEHP, including, but not limited to, the *Kids 16 pc. Baking Set, #008-*
22 *29214 (#7 97063 02452 3)* and *Kids 5 Piece Set, #008-29508 (#7 97063 02529 2)*, manufactured,
23 imported, distributed, sold and/or offered for sale by TKC, directly or through others, to consumers
24 in California (“Products”).

25 **1.6 Notice of Violation**

26 On July 20, 2011, Held served TKC and various public enforcement agencies with a
27 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice
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1 that alleged that TKC was in violation of Proposition 65 for failing to warn consumers that the
2 Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public
3 enforcer has prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On September 30, 2011, Held filed a complaint in the Superior Court in and for the County
6 of San Francisco against TKC and Does 1 through 150 (the "Complaint"), alleging violations of
7 Proposition 65, based on the alleged exposures to DEHP contained in certain children's bags sold
8 by TKC.

9 **1.8 No Admission**

10 TKC denies the material factual and legal allegations contained in Held's Notice and
11 Complaint and maintains that all products that TKC has manufactured, imported, distributed, sold
12 and/or offered for sale in California, including the Products, have been and are in compliance with
13 all laws. Nothing in this Consent Judgment shall be construed as an admission by TKC of any fact,
14 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
15 constitute or be construed as an admission by TKC of any fact, finding, conclusion, issue of law, or
16 violation of law. However, this section shall not diminish or otherwise affect TKC's obligations,
17 responsibilities, and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over TKC as to the allegations contained in the Complaint, that venue is proper in the
21 County of San Francisco and that this Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and
23 binding resolution of all claims that were or could have been raised in the Complaint against TKC
24 based on the facts alleged therein and in the Notice

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" shall mean March 29,
27 2012.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1** Prior to entering into this Consent Judgment, TKC removed the Products identified
3 in Paragraph 1.5 from the stream of commerce in California.

4 **2.2** As of the Effective Date, TKC shall not ship, sell, distribute, or supply to an
5 unaffiliated third party any Product that will be sold or offered for sale to California consumers
6 unless each accessible component (i.e., any component that can be touched, handled, or mouthed by
7 a person during reasonably foreseeable use) contains DEHP in concentrations less than 1,000 parts
8 per million when analyzed pursuant to U.S. Environmental Protection Agency sample preparation
9 and test methodologies 3580A and 8270C (“DEHP Standard”).

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

12 On or before the Effective Date, TKC shall make a payment of \$4,000 to be apportioned in
13 accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of
14 these funds earmarked for the State of California’s Office of Environmental Health Hazard
15 Assessment (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Held.

16 **3.2 Reimbursement of Held’s Fees and Costs**

17 The Parties have reached an accord on the compensation to be paid to Held and his counsel,
18 which the parties agree is appropriate under general contract principles and the private attorney
19 general doctrine codified at California Code of Civil Procedure section 1021.5, for all work
20 performed in this matter, except fees that may be incurred on appeal. TKC shall pay \$28,500, on
21 or before the Effective Date, for fees and costs incurred investigating, litigating and enforcing this
22 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
23 obtaining the Court’s approval of this Consent Judgment in the public interest.

24 **3.3 Payment Procedures**

25 **(i)** All payments made under this Consent Judgment shall be held in trust by the
26 Chanler Group until the Court approves the Consent Judgment. The settlement funds shall be
27 made payable by checks or wire transfers, as follows:
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- (a) “The Chanler Group in Trust for OEHHA” in an amount equal to 75% of the civil penalty;
- (b) “The Chanler Group in Trust for Anthony Held” in an amount equal to 25% of the penalty; and
- (c) “The Chanler Group in Trust” in the amount of \$28,500.

(ii) After the Consent Judgment has been approved, TKC shall issue a 1099 form to each of the following entities:

- (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties payable to OEHHA;
- (b) Held, whose address and tax identification number shall be furnished upon request, for the civil penalties payable to Held; and
- (c) The Chanler Group (EIN: 94-3171522) for the amount of \$28,500.

(iii) All payments transmitted to the Chanler Group shall be delivered to the following address:

The Chanler Group
 Attn: Proposition 65 Controller
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

4. CLAIMS COVERED AND RELEASED

4.1 Plaintiff’s Public Release of Proposition 65 Claims

Held acting on his own behalf and in the public interest releases TKC and its parents, shareholders, divisions, subdivisions, subsidiaries, franchisees, sister companies, affiliates, successors, assigns, cooperative members, licensees, agents and representatives from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in the Notice.

1 **4.2 Plaintiff’s Individual Release of Claims**

2 Held also, in his individual capacity only and not in his representative capacity, provides a
3 release to TKC and its parents, shareholders, divisions, subdivisions, subsidiaries, franchisees, sister
4 companies, affiliates, successors, assigns, cooperative members, licensees, agents and
5 representatives herein which shall be effective as a full and final accord and satisfaction, as a bar to
6 all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
7 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
9 Products manufactured, distributed or sold by TKC.

10 **4.3 Defendant’s Release of Plaintiff**

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

17 **5. 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 year
20 after it has been fully executed by all Parties, in which event any monies that have been provided to
21 Held or his counsel pursuant to Section 3 above shall be refunded within fifteen (15) days after
22 receiving written notice from TKC that the one-year period has expired.

23 **6. SEVERABILITY**

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

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7. GOVERNING LAW

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

8. NOTICES

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

<p>For TKC:</p> <p>Robert S. Schuda, Esq. McKenna Long & Aldridge LLP 300 South Grand Avenue, 14th Floor Los Angeles, CA 90071</p>	<p>For Held:</p> <p>Proposition 65 Coordinator The Chanler Group 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710-2565</p>
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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.

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

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

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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:

APPROVED
Date: *By Anthony Held at 3:43 pm, Mar 15, 2012*

Date: *March 19, 2012*

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

By: *Karen E. Cavender*
The Kitchen Collection, LLC