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10 ANTHONY E. HELD, PhD., P.E.

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PhD., P.E.,) Case No. RG13704895
16 Plaintiff,)
17 v.) **[PROPOSED] CONSENT JUDGMENT AS**
18 CLASSIC IMPORTS, INC.; and DOES 1-) **TO DEFENDANT CLASSIC IMPORTS,**
19 150, inclusive,) **INC.**
20 Defendants.)
21) Date:
22) Time:
23) Dept: 516
24) Judge: Hon. Brenda Harbin-Forte
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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, PhD., P.E. and Classic Imports, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
4 P.E. (“Held” or “Plaintiff”) and defendant Classic Imports, Inc. (“Classic Imports” or
5 “Defendant”), with Held and Classic Imports collectively referred to as the “Parties.”

6 **1.2 Anthony E. Held, PhD., P.E.**

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 significantly reducing or
9 eliminating hazardous substances contained in consumer and commercial products.

10 **1.3 Classic Imports, Inc.**

11 Classic Imports employs ten 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 §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Held alleges that Classic Imports has manufactured, imported, distributed and/or sold
16 vinyl/PVC keychains with Di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of California
17 without the requisite Proposition 65 health hazard warnings. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause birth defects and other
19 reproductive harm.

20 **1.5 Notice of Violation.**

21 On September 9, 2013, Held served Classic Imports and various public enforcement
22 agencies with a document entitled “60-Day Notice of Violation” alleging that Classic Imports
23 violated Proposition 65 by failing to warn consumers that vinyl/PVC keychains including, but
24 not limited to, the *Ghostbusters Keychain, #0 1163849*, exposed users in California to DEHP
25 (“Notice”).

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1.6 Complaint.

On November 27, 2013, Held filed a complaint in the Superior Court in and for the County of Alameda against Classic Imports and Does 1 through 150, *Held v. Classic Imports, Inc., et al.*, Case No. RG13704895 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl/PVC keychains sold by Classic Imports in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out of the facts or conduct alleged therein. Classic Imports denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that it manufactures no products, and that all of the products it has caused to be manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Classic Imports of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Classic Imports of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense Classic Imports may have in this or any other future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by Classic Imports for purposes of settling, compromising, and resolving issues disputed in this action. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Classic Imports under this Consent Judgment. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Classic Imports by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to Classic Imports under such other laws.

1 **1.8 Consent to Jurisdiction.**

2 For purposes of this Consent Judgment only, Classic Imports stipulates that this Court
3 has jurisdiction over Classic Imports as to the allegations contained in the Complaint, that venue
4 is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1** “Product[s]” means vinyl/PVC keychains containing DEHP including, but
8 not limited to, the *Ghostbusters Keychain*, #01163849, #01163856 and #01163831, which are
9 manufactured, caused to be manufactured, imported, distributed and/or sold in the State of
10 California by Classic Imports.

11 **2.2** “Effective Date” means the date the Court approves the Consent Judgment,
12 including any tentative rulings not opposed by the Parties.

13 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
14 supplies a Product, or their component parts, to Classic Imports.

15 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

16 **3.1 Reformulation Commitment and Standards.**

17 As of the Effective Date, Classic Imports shall only manufacture, or cause to be
18 manufactured, Products which contain less than or equal to 1,000 parts per million (“ppm”) of
19 DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent
20 methodologies utilized by federal or state agencies for the purpose of determining DEHP
21 content in a solid substance (“Reformulated Products”).

22 **3.2 Vendor Notification Requirement.**

23 To the extent it has not already done so, on or before May 15, 2015, Classic Imports shall
24 provide the reformulation standards specified in section 3.1 for Reformulated Products to any
25 and all of its Vendors of Products, or their component parts, that will be sold and/or offered for
26 sale, and that Classic Imports has reason to believe will be sold and/or offered for sale, in
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1 California, and shall instruct each Vendor to provide only Reformulated Products and
2 component parts that meet the reformulation standard set forth in section 3.1 above.

3 **3.3 Sales of Existing Products with Warnings**

4 Nothing in this Consent Judgment shall preclude Classic Imports from shipping and
5 selling in California its existing inventory of Products. Classic Imports agrees that any Products
6 that do not qualify as Reformulated Products, which it manufactures, or causes to be
7 manufactured, prior to July 1, 2015, and which it directly distributes to, imports to, ships to, sells
8 in, or offers for sale in California after the Effective Date, will include a warning affixed to the
9 packaging, labeling, or directly on each Product that states:

10 **WARNING:** This product contains DEHP, a chemical
11 known to the State of California to cause cancer,
and birth defects and other reproductive harm.

12 or,

13 **WARNING:** This product contains a chemical known to
14 the State of California to cause cancer, and
birth defects and other reproductive harm.

15 **4. MONETARY PAYMENTS**

16 In settlement of all the claims referred to in this Consent Judgment, Classic Imports shall
17 pay a total of \$18,000 in civil penalties in accordance with this Section. Each penalty payment
18 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d),
19 with 75% of the funds remitted to the California Office of Environmental Health Hazard
20 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

21 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §** 22 **25249.7(b).**

23 Classic Imports shall pay an initial civil penalty in the amount of \$3,000 on or before the
24 Effective Date. Classic Imports shall issue two separate checks to: (a) OEHHA, in the amount
25 of \$2,250; and (b) “The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in the amount
26 of \$750. The initial civil penalty shall be delivered to the address listed in Section 4.4 below.
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1 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

2 Classic Imports shall pay a final civil penalty in the amount \$15,000 on or before
3 December 15, 2015. The final civil penalty shall be waived in its entirety, if, on or before
4 December 1, 2015, an Officer of Classic Imports certifies in writing that it, as of December 1,
5 2015, has manufactured, or caused to be manufactured, for sale in California only Reformulated
6 Products and that it will continue to manufacture, cause the manufacture of, distribute, sell and
7 offer for sale in California only Reformulated Products, or that it has discontinued selling the
8 Products on or before the Effective Date. Such certification must be received by The Chanler
9 Group on or before December 1, 2015. The certification in lieu of paying the final civil penalty
10 provided by this Section is a material term, and time is of the essence. Unless waived, Classic
11 Imports shall issue two separate checks for its final civil penalty payment to: (a) OEHHA, in the
12 amount of \$11,250; and (b) “The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in
13 the amount of \$3,750. The final civil penalty shall be delivered to the address listed in Section
14 4.4 below.

15 **4.3 Reimbursement of Plaintiff’s Fees and Costs.**

16 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee
18 issue to be resolved after the material terms of the agreement had been settled. Classic Imports
19 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
20 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
21 due to Held and his counsel under general contract principles and the private attorney general
22 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed
23 (and to be performed) in this matter, except fees that may be incurred in connection with a third-
24 party, including the Office of the Attorney General, appeal (if any). Under these legal principles,
25 Classic Imports shall pay the amount of \$20,000 to reimburse Held’s fees and costs incurred
26 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
27 to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
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1 Judgment in the public interest. This payment shall be made as follows:

2 The first payment of \$5,000 is payable on or before the Effective Date to “The Chanler
3 Group” and shall be delivered to the address in Section 4.4 below.

4 The second payment of \$15,000 is payable on or before August 22, 2015, to “The
5 Chanler Group” and shall be delivered to the address in Section 4.4 below

6 **4.4 Payment Procedures.**

7 All payments pursuant to Sections 4.1 through 4.3 shall be delivered to the following
8 payment address:

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

12 **5. CLAIMS COVERED AND RELEASED**

13 **5.1 Held’s Release of Proposition 65 Claims**

14 Held, acting on his own behalf and in the public interest, releases Classic Imports and its
15 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
16 and attorneys (“Releasees”) and each entity to whom Classic Imports directly or indirectly
17 distributes or sells the Products including, but not limited to, its downstream distributors,
18 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
19 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned
20 exposures to DEHP from the Products manufactured, imported, distributed or sold by Classic
21 Imports prior to the Effective Date, as set forth in the Notices. Compliance with the terms of this
22 Consent Judgment constitutes compliance with Proposition 65 by Classic Imports with respect to
23 the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold
24 or distributed for sale by Classic Imports after the Effective Date.

25 **5.2 Held’s Individual Release of Claims**

26 Held, in his individual capacity only and *not* in his representative capacity, also provides
27 a release to Classic Imports, Releasees, and Downstream Releasees which shall be effective as a
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1 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
2 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature,
3 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
4 or actual exposures to DEHP in Products manufactured, imported, distributed or sold by Classic
5 Imports before the Effective Date.

6 **5.3 Classic Import's Release of Held**

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

13 **6. 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
16 year after it has been fully executed by all Parties. Held and Classic Imports agree to support the
17 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
18 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
19 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
20 which motion Held shall draft and file and Classic Imports shall support, appearing at the
21 hearing if so requested. If any third-party objection to the motion is filed, Held and Classic
22 Imports agree to work together to file a reply and appear at any hearing. This provision is a
23 material component of the Consent Judgment and shall be treated as such in the event of a
24 breach.

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. In the event that Proposition 65 is repealed,
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1 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
2 Products, then Classic Imports may provide Held with written notice of any asserted change in
3 the law, and shall have no further obligations pursuant to this Consent Judgment, with respect to
4 injunctive relief, and to the extent that, the Products are so affected. Nothing in this Consent
5 Judgment shall be interpreted to relieve Classic Imports from its obligation to comply with any
6 pertinent state or federal law or regulation.

7 **8. NOTICES**

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

12 To Classic Imports:

13 Thomas Georgianna, Esq.
14 Boyd Law
8001 Irvine Center Drive, Suite 1185
Irvine, California 92618

15 To Held:

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

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

21 **9. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
23 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
24 motion of any party and the entry of a modified Consent Judgment by the Court thereon.

25 **10. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
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1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
2 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
3 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
4 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
5 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
6 waiver unless set forth in writing between the Parties.

7 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

8 Held and his counsel agree to comply with the reporting form requirements referenced in
9 California Health and Safety Code section 25249.7(f).

10 **12. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement or modify the Consent
12 Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision
13 thereof, under C.C.P. §664.6.

14 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

18 **14. AUTHORIZATION**

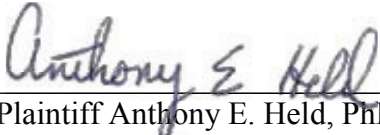
19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 Consent Judgment.

22 **AGREED TO:**

AGREED TO:

23 Date: April 23, 2015

Date: _____

24 By: 
25 Plaintiff Anthony E. Held, PhD., P.E.

26 By: _____
27 Defendant Classic Imports, Inc.

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
2 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
3 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
4 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
5 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
6 waiver unless set forth in writing between the Parties.

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8 Held and his counsel agree to comply with the reporting form requirements referenced in
9 California Health and Safety Code section 25249.7(f).

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16 document format (pdf), each of which shall be deemed an original, and all of which, when taken
17 together, shall constitute one and the same document.

18 **14. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 Consent Judgment.

22 **AGREED TO:**

23 **AGREED TO:**

24 Date: _____

24 Date: May 4, 2015

25
26 By: _____

27 Plaintiff Anthony E. Held, PhD., P.E.

26 By:  _____

27 Defendant Classic Imports, Inc.