

1 Cliff Chanler, State Bar No. 135545
Jonathan A. Bornstein, State Bar No. 196345
2 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PhD., P.E.,) Case No. RG13704894
Plaintiff,)
v.) [PROPOSED] CONSENT JUDGMENT AS
ETHICAL PRODUCTS, INC.; and DOES) TO DEFENDANT ETHICAL PRODUCTS,
1-150, inclusive,) INC.
Defendants.)
) Date:
) Time:
) Dept:
) Judge: Hon.

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1. INTRODUCTION

1.1 Anthony E. Held, PhD., P.E. and Ethical Products, Inc.

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

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

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

1.3 Ethical Products, Inc.

Ethical Products employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5 et seq. (“Proposition 65”).

1.4 General Allegations.

Held alleges that Ethical Products has manufactured, imported, distributed and/or sold pet carriers with vinyl/PVC components, which contained DEHP, causing an exposure to DEHP for use in the State of California without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and reproductive harm.

1.5 Notice of Violation.

On September 9, 2013, Held served Ethical Products and various public enforcement agencies with a document entitled “60-Day Notice of Violation” alleging that Ethical Products violated Proposition 65 by failing to warn consumers that pet carriers with vinyl/PVC components, including but not limited to products known as the *Fashion Pet Travel Gear Soft-Sided Pet Carrier, Small Carryall Red, Item No. 5179, UPC #0 77234 05179 5*, which allegedly contained DEHP (“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 Ethical Products and Does 1 through 150, *Held v. Ethical Products, Inc., et al.*, Case No. RG13704894 (“Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain pet carriers with vinyl/PVC components, sold by Ethical Products 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. Ethical Products denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that all of the products it has manufactured, imported, distributed and/or sold in the State of California, including the Covered Products, have been, and are, in compliance with all laws. By execution of this Consent Judgment and agreeing to comply with its terms, Ethical Products does not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP in Covered Products, such being specifically denied by Ethical Products. Nothing in this Consent Judgment shall be construed as an admission by Ethical Products 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 Ethical Products 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 Ethical Products may have in this or any other future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by Ethical Products 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 Ethical Products under this Consent Judgment.

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1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment only, Ethical Products stipulates that this Court has jurisdiction over Ethical Products as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Product[s]” means any and all pet carriers with vinyl/PVC components manufactured, imported, distributed and/or sold in the State of California by Ethical Products including, but not limited to, products known as the *Fashion Pet Travel Gear Soft-Sided Pet Carrier, Small Carryall Red, Item No. 5179, UPC #0 77234 05179 5*, which allegedly contained DEHP.

2.2 “Effective Date” means June 4, 2014.

2.3 “Vendor” means a person or entity that manufactures, imports, distributes, or supplies a Covered Product to Ethical Products.

3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION

3.1 Reformulation Commitment and Standards.

As of the Effective Date, Ethical Products shall only manufacture Covered Products that contain less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance (“Reformulated Covered Products”). By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Ethical Products by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to Ethical Products under such other laws.

3.2 Vendor Notification Requirement.

To the extent it has not already done so, on or before the Effective Date, Ethical Products shall provide the reformulation standards specified in Section 3.1 for Reformulated Covered

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Products to any and all of its Vendors of Covered Products or their component parts that will be sold or offered for sale to California consumers, and shall instruct each Vendor to provide only Reformulated Covered Products or component parts that meet the reformulation standards for Reformulated Covered Products in Section 3.1 above.

3.3 Sales of Existing Products with Warnings

Nothing in this consent judgment shall preclude Ethical Products from shipping and selling in California its existing inventory of Products. Commencing on June 4, 2014, Ethical Products agrees that any Products that Ethical Products manufactured prior to June 4, 2014, and which Ethical Products directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Section 3.1, will include a warning affixed to the packaging, labeling, or directly on each Product that states:

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

4. MONETARY PAYMENTS

In settlement of all the claims referred to in this Consent Judgment, Ethical Products shall pay a total of \$25,500.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

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

Ethical Products shall pay an initial civil penalty in the amount of \$5,500.00 on or before June 4, 2014. Ethical Products shall issue two separate checks to: (a) OEHHA, in the amount of \$4,125.00; and (b) “The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in the amount of \$1,375.00. All penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

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4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).

Ethical Products shall pay a final civil penalty in the amount \$20,000.00 on or before October 15, 2014. The final civil penalty shall be waived in its entirety, if, on or before October 1, 2014, an Officer of Ethical Products certifies in writing that it, as of June 4, 2014, Ethical Products has manufactured for sale in California only Reformulated Covered Products and that it will continue to manufacture, distribute, sell and offer for sale in California only Reformulated Covered Products, or that it has discontinued selling the Covered Products on or before the Effective Date. Such certification must be received by The Chanler Group on or before October 1, 2014. The certification in lieu of paying the final civil penalty provided by this Section is a material term, and time is of the essence. Unless waived, Ethical Products shall issue two separate checks for its final civil penalty payment to: (a) OEHHA, in the amount of \$15,000.00; and (b) "The Chanler Group in Trust for Anthony E. Held, PhD., P.E." in the amount of \$5,000.00.

4.3 Reimbursement of Plaintiff's Fees and Costs.

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee issue to be resolved after the material terms of the agreement had been settled. Ethical Products then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed (and to be performed) in this matter, except fees that may be incurred in connection with a third-party, including the Office of the Attorney General, appeal (if any). Under these legal principles, Ethical Products shall pay the amount of \$34,000.00 to reimburse Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest. This payment shall be made payable to no later than June 4,

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2014, to The Chanler Group and shall be delivered to the address in Section 4.4.1(a) below.

4.4 Payment Procedures.

4.4.1 Funds Held In Trust

(a) All payments owed to Held, pursuant to Sections 4.1 through 4.3, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of June 4, 2014, Plaintiff shall meet and confer with Ethical Products about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid

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and held in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon Ethical Products' written request.

5. CLAIMS COVERED AND RELEASED

5.1 Held, acting on behalf of himself and in the public interest, hereby releases Ethical Products, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and any of its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and any other person or entity to whom they directly or indirectly distribute or sell Covered Products ("Downstream Defendant Releasees"), from any alleged or actual violation of Proposition 65 that has been asserted by Held in the public interest in his Notice and Complaint regarding the alleged failure to warn about exposure to DEHP in Covered Products sold or distributed by Ethical Products prior to the Effective Date. Ethical Products' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP in Covered Products.

5.2 Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Ethical Products, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 regarding the failure to warn about exposure to DEHP in Covered Products sold or distributed prior to the Effective Date.

5.3 Held also, in his individual capacity only and *not* in his representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,

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damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Held, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.4 Ethical Products waives any and all Claims against Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products.

5.5 Ethical Products also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Ethical Products of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Ethical Products acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Ethical Products expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. COURT APPROVAL

6.1 By this Consent Judgment and upon its approval, the Parties waive their right to a trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and discovery orders.

6.2 The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall file and which Ethical Products shall support as reasonably necessary.

6.3 If this Consent Judgment is not approved by the Court: (a) this Consent Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

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7. GOVERNING LAW

7.1 The terms of this Consent Judgment shall be governed by the laws of the State of California, and shall apply only to Covered Products offered for sale in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Ethical Products may provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

7.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

8. NOTICES

8.1 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:

To Ethical Products:
Jonathan Zelinger
Ethical Products, Inc.
27 Federal Plaza
Bloomfield, NJ 07003

With a Copy to:
Robert L. Podvey, Esq.
Podvey, Meanor, Catenacci, Hildner, Coccoziello & Chattman, P.C.

1
2 One Riverfront Plaza - The Legal Center
Newark, New Jersey 07102

3 With a Copy to:

4 Stanley W. Landfair
5 McKenna Long & Aldridge LLP
6 1 Market Plaza, Spear Tower, 24th Floor
San Francisco, CA 94105

7 To Held:

8 Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

11 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
12 of address to which all notices and other communications shall be sent.

13 **9. MODIFICATION**

14 **9.1 Modification.** This Consent Judgment may be modified by written agreement of
15 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
16 Party and entry of a modified Consent Judgment by the court.

17 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
18 regulation is adopted that addresses the DEHP content of Covered Products sold in California
19 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
20 in Section 3.1 of this Consent Judgment for good cause shown.

21 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
22 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
23 Party prior to filing a motion to modify the Consent Judgment.

24 **10. ENTIRE AGREEMENT**

25 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
28 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
binding unless executed in writing by the Party to be bound thereby. No waiver of any of the

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provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

11. RETENTION OF JURISDICTION

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

12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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

14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

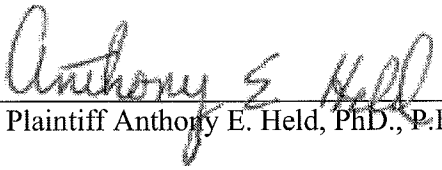
14.1 Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

AGREED TO:

AGREED TO:

Date: May 15, 2014

Date: _____

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

By: _____
Defendant Ethical Products, Inc.

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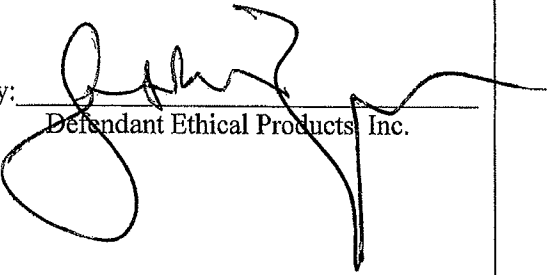
AGREED TO:

AGREED TO:

Date: _____

Date: June 3, 2014

By: _____
Plaintiff Anthony E. Held, PhD., P.E.

By:  _____
Defendant Ethical Products, Inc.