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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.
13

14 Plaintiff,

15 v.

16 FLIGHT 001, INC.; and DOES 1-150,
inclusive,
17

Defendants.
18

Case No. 114CV272745

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, P.D., P.E.
4 ("Held") and defendant Flight 001, Inc. ("Flight 001"), with Held and Flight 001 each referred to
5 individually as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Held alleges that Flight 001 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 California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Held alleges that Flight 001 manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC luggage tags, passport wallets, and card cases, that each contain di(2-
17 ethylhexyl)phthalate ("DEHP"), and that it does so without providing the health hazard warnings
18 that Held alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
19 chemical known to the State of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are: (a) vinyl/PVC luggage tags containing
22 DEHP that are manufactured, imported, sold or distributed for sale in California by Flight 001,
23 including, but not limited to, the *Hello My Name Luggage Tag, SKU # FLI2815*; (b) passport
24 wallets containing DEHP that are manufactured, imported, sold or distributed for sale in California
25 by Flight 001, including, but not limited to, the *Passport Wallet, SKU #FLI21809*; and (c) card
26 cases containing DEHP that are manufactured, imported, sold or distributed for sale in California by
27 Flight 001, including, but not limited to, the *Card Case, SKU #FLI21975*. The vinyl/PVC luggage
28 tags, passport wallets, and card cases described herein are collectively referred to as "Products".

1 **1.6 Notice of Violation**

2 On April 30, 2014, Held served Flight 001 and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation ("Notice"), alleging that Flight 001 violated Proposition 65 when
4 it failed to warn its customers and consumers in California that its vinyl/PVC luggage tags expose
5 users to DEHP. On March 13, 2015, Held served Flight 001 and the requisite public enforcement
6 agencies with a Supplemental 60-Day Notice of Violation ("Notice"), alleging that Flight 001
7 violated Proposition 65 when it failed to warn its customers and consumers in California that its
8 passport wallets and card cases expose users to DEHP. The initial Notice and Supplemental Notice
9 together are referred to collectively as the "Notices." To the best of the Parties' knowledge, no
10 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
11 forth in the Notices.

12 **1.7 Complaint**

13 On November 4, 2014, Held commenced the instant action, naming Flight 001 as a
14 defendant for the alleged violations of Proposition 65 that are the subject of the Notice. Upon the
15 latter of the expiration of the sixty-day notice period following Held's service of the Supplemental
16 Notice, or the Court's entry of this Consent Judgment, the Complaint shall be deemed amended
17 nunc pro tunc to include all Products and alleged violations that are the subject of the Notices,
18 provided that, as of the expiration of the sixty-day notice period following Held's service of the
19 Supplemental Notice, no public enforcer has commenced and is diligently prosecuting the
20 allegations set forth in the Supplemental Notice.

21 **1.8 No Admission**

22 Flight 001 denies the material, factual, and legal allegations contained in the Notices and
23 Complaint, and maintains that all of the products that it has manufactured, imported, sold or
24 distributed and/or offered for sale in California, including the Products, have been, and are, in
25 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
26 Flight 001 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
27 compliance with this Consent Judgment constitute or be construed as an admission by Flight 001 of
28 any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,

1 however, diminish or otherwise affect Flight 001's obligations, responsibilities, and duties under
2 this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Flight 001 as to the allegations contained in the Complaint, that venue is proper in
6 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
7 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
10 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

11 **2. INJUNCTIVE SETTLEMENT TERMS**

12 Commencing September 1, 2015, and continuing thereafter, Flight 001 shall only
13 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
14 this Consent Judgment, "Reformulated Products" are defined as Products with a maximum DEHP
15 concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
16 Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies
17 utilized by state or federal agencies for the purpose of determining DEHP content in a solid
18 substance.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

21 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
22 claims referred to in this Consent Judgment, Flight 001 shall pay \$13,000 in civil penalties in
23 accordance with this Section. Each penalty payment will be allocated in accordance with California
24 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
25 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
26 penalty remitted to Held. Held's counsel shall be responsible for remitting Flight 001's penalty
27 payment(s) under this Consent Judgment to OEHHA.

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1 **3.1.1 Initial Civil Penalty.** Flight 001 shall make an initial civil penalty payment
2 of \$4,000. Flight 001 shall provide its payment in a single check made payable to "Anthony E.
3 Held, Client Trust Account" to be delivered to the address provided in Section 3.4, below.

4 **3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On August
5 15, 2015, Flight 001 shall make a final civil penalty payment of \$9,000. Pursuant to title 11
6 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment
7 shall be waived in its entirety if, no later than August 1, 2015, an officer of Flight 001 provides
8 Held with a signed declaration certifying that all of the Products it sells, ships for sale, or distributes
9 for sale in California as of the date of its declaration, are Reformulated Products, and that Flight 001
10 will continue to so offer only Reformulated Products in California in the future. The option to
11 certify early reformulation in lieu of making the final civil penalty payment otherwise required by
12 this Section is a material term, and time is of the essence. To obtain a waiver of the final civil
13 penalty, Flight 001 must deliver its declaration certifying reformulation to Held's counsel at the
14 address provided in Section 3.4, below. In the event that Flight 001 does not timely certify its
15 compliance or make the final civil penalty payment required by this Section, the Parties agree that
16 Held may file a motion or application seeking an order compelling Flight 001's compliance with
17 this Section and may seek his reasonable attorneys' fees and costs pursuant to general contract
18 principles and Code of Civil Procedure section 1021.5.

19 **3.2 Reimbursement of Attorneys' Fees and Costs**

20 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
22 to be resolved after the material terms of the agreement had been settled. Shortly after the other
23 settlement terms had been finalized, Flight 001 expressed a desire to resolve Held's fees and costs.
24 The Parties then negotiated a resolution of the compensation due to Held and his counsel under
25 general contract principles and the private attorney general doctrine codified at California Code of
26 Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement
27 and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, Flight 001
28 shall reimburse Held and his counsel \$35,000. Flight 001's payment shall be delivered to the

1 address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement
2 shall cover all fees and costs incurred by Held investigating, bringing this matter to Flight 001's
3 attention, litigating, and negotiating a settlement of the matter in the public interest.

4 **3.3 Payment Timing; Payments Held In Trust**

5 With the exception of the final civil penalty payment required by Section 3.1.2, Flight 001
6 shall deliver all payments required by this Consent Judgment to its counsel within 45 days of the
7 date that this agreement is fully executed by the Parties. Flight 001's counsel shall confirm receipt
8 of settlement funds in writing to Held's counsel and, thereafter, hold the amounts paid in trust until
9 such time as the Court grants the motion for approval of the Parties' settlement contemplated by
10 Section 5. Within five days of the Effective Date, Flight 001's counsel shall deliver all settlement
11 payments it has held in trust to Held's counsel at the address provided in Section 3.4. In the event
12 the final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective Date,
13 then Flight 001 shall deliver the final civil penalty payment to its attorney to be held in trust until,
14 and disbursed within five days after the Effective Date.

15 **3.4 Payment Address**

16 All payments required by this Consent Judgment shall be delivered to the following
17 address:

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

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Held's Release of Proposition 65 Claims**

25 Held, acting on his own behalf and in the public interest, releases Flight 001 and its parents,
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
27 attorneys ("Releasees") and each entity to whom Flight 001 directly or indirectly distributes or sells
28 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for

1 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
2 manufactured, imported, distributed or sold by Flight 001 prior to the Effective Date, as set forth in
3 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 by Flight 001 with respect to the alleged or actual failure to warn about exposures to
5 DEHP from Products manufactured, sold or distributed for sale by Flight 001 after the Effective
6 Date.

7 **4.2 Held's Individual Release of Claims**

8 Held, in his individual capacity only and *not* in his representative capacity, also provides a
9 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
10 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
11 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
12 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
13 exposures to DEHP in Products manufactured, imported, distributed or sold by Flight 001 before
14 the Effective Date.

15 **4.3 Flight 001's Release of Held**

16 Flight 001, on its own behalf and on behalf of its past and current agents, representatives,
17 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
18 attorneys and other representatives, for any and all actions taken or statements made (or those that
19 could have been taken or made) by Held and his attorneys and other representatives in the course of
20 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
21 the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
25 after it has been fully executed by all Parties. Held and Flight 001 agree to support the entry of this
26 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
27 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
28 noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall

1 draft and file and Flight 001 shall support, appearing at the hearing if so requested. If any third-
2 party objection to the motion is filed, Held and Flight 001 agree to work together to file a reply and
3 appear at any hearing. This provision is a material component of the Consent Judgment and shall
4 be treated as such in the event of a breach.

5 **6. SEVERABILITY**

6 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
7 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
8 remaining provisions shall not be adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
12 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Flight 001
13 may provide Held with written notice of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
15 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Flight 001 from its
16 obligation to comply with any pertinent state or federal law or regulation.

17 **8. NOTICE**

18 Unless specified herein, all correspondence and notice required by this Consent Judgment
19 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
20 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
21 following addresses:

22 To Flight 001:

23 Jay Connolly, Esq.
24 Seyfarth Shaw LLP
25 560 Mission Street, 31st Floor
26 San Francisco, CA 94105-2930

To Held:

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

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

1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

17 **AGREED TO:**
18 Anthony E. Held
19 ANTHONY E. HELD, PH.D., P.E.

20 Dated: July 24, 2015

17 **AGREED TO:**
18 Bradley John
19 FLIGHT 001, INC.

20 By: BRADLY JOHN
(Print Name)

21 Its: Co-Founder
(Title)

22 Dated: 7/15/15

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