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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, Ph.D., P.E.,
13 Plaintiff,
14 v.
15 ACCESSORY NETWORK GROUP LLC; *et al.*,
16 Defendants.

Case No. CGC-08-481439

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Accessory Network Group LLC**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Accessory Network Group LLC (hereinafter “ANG”), with Dr. Held and
5 ANG 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 exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 ANG 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, California Health & Safety
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that ANG has manufactured, distributed and/or sold in the State of California
16 children’s vinyl zipper pulls, vinyl wallets, gloves with vinyl components, and vinyl bags containing
17 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”), as a
19 chemical known to the State of California to cause birth defects and other reproductive harm. DEHP
20 is referred to herein as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: children’s
23 vinyl zipper pulls containing the Listed Chemical, including, but not limited to, *Soccer Insulated*
24 *Lunch Cooler, BFK000413 (#0 93177 40606 4)*; vinyl wallets containing the Listed Chemical,
25 including, but not limited to, *Hot Wheels Cinch Sack & Wallet Set, (#0 93177 70668 4)*; gloves with
26 vinyl components containing the Listed Chemical, including, but not limited to, *Winnie the Pooh Hat*
27 *& Gloves Set, RN #87429*; and vinyl bags containing the Listed Chemical, including, but not limited
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1 to, *Scooby-Doo! Bag* (#8 13274 00800 5) and *Disney's Winnie the Pooh Lunch Bag*, (#8 13274
2 00257 7). All such items shall be referred to herein as the "Products."

3 **1.6 Notice of Violation**

4 On November 28, 2008, February 24, 2009, and April 2, 2009, Dr. Held served ANG and
5 various public enforcement agencies with documents entitled "60-Day Notice of Violation" (together
6 "Notices") that provided ANG and such public enforcers with notice that alleged that ANG was in
7 violation of California Health & Safety Code § 25249.6 for failing to warn consumers and customers
8 that the Products exposed users in California to DEHP.

9 **1.7 Complaint**

10 On August 5, 2009, Dr. Held, who was and is acting in the interest of the general public in
11 California, filed a second amended complaint in case number CGC-08-481439 of the San Francisco
12 Superior Court, adding ANG as a defendant and alleging violations of Health & Safety Code
13 § 25249.6 by ANG based on the alleged exposures to DEHP contained in the Products manufactured,
14 distributed and/or offered for sale in California by ANG ("Complaint").

15 **1.8 No Admission**

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

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the parties stipulate that this Court has
26 jurisdiction over ANG as to the allegations contained in the Complaint, that venue is proper in the
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1 City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean December 15,
5 2009.

6 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

7 **2.1 Product Warnings**

8 Commencing on the Effective Date, ANG shall not sell, ship, or offer to be shipped for sale in
9 California any Product unless such Products are sold or shipped with one of the clear and reasonable
10 warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or
11 comply with the reformulation standards set forth in Sections 2.3 and 2.4.

12 Each warning shall be prominently placed with such conspicuousness as compared with other
13 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
14 individual under customary conditions before purchase or use. Each warning shall be provided in a
15 manner such that the consumer or user understands to which *specific* Product the warning applies, so
16 as to minimize the risk of consumer confusion.

17 **(a) Retail Store Sales.**

18 **(i) Product Labeling.** ANG may affix a warning to the packaging,
19 labeling, or directly on each Product sold in retail outlets in California by ANG or its agents, that
20 states:

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

23 **(ii) Point-of-Sale Warnings.** Alternatively, ANG may provide warning
24 signs in the form below to its customers in California with instructions to post the warnings in close
25 proximity to the point of display of the Products.

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

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement
3 must be used:¹

4 **WARNING:** The following products contain DEHP, a
5 phthalate chemical known to the State of
6 California to cause birth defects and other
7 reproductive harm:

8 [*list products for which warning is required*]

9 **(b) Mail Order Catalog and Internet Sales.** In the event that ANG sells
10 Products via mail order catalog or internet to customers located in California after the Effective Date
11 that are not Reformulated Products, ANG shall provide a warning for Products sold via mail order
12 catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website.
13 Warnings given in the mail order catalog or on the website shall identify the specific Product to
14 which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

15 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
16 catalog must be in the same type size or larger than the Product description text within the catalog.
17 The following warning shall be provided on the same page and in the same location as the display
18 and/or description of the Product:

19 **WARNING:** This product contains DEHP, a phthalate
20 chemical known to the State of California to
21 cause birth defects and other reproductive harm.

22 Where it is impracticable to provide the warning on the same page and in the same location as
23 the display and/or description of the Product, ANG may utilize a designated symbol to cross
24 reference the applicable warning and shall define the term “designated symbol” with the following
25 language on the inside of the front cover of the catalog or on the same page as any order form for the
26 Product(s):

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¹For purposes of the consent judgment, “sold in proximity” shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 **WARNING:** Certain products identified with this symbol
2 ▼ and offered for sale in this catalog contain
3 DEHP, a phthalate chemical known to the
 State of California to cause birth defects and
 other reproductive harm.

4 The designated symbol must appear on the same page and in close proximity to the display
5 and/or description of the Product. On each page where the designated symbol appears, ANG must
6 provide a header or footer directing the consumer to the warning language and definition of the
7 designated symbol.

8 If ANG elects to provide warnings in the mail order catalog, then the warnings must be
9 included in all catalogs offering to sell one or more Products printed after the Effective Date.

10 (ii) **Internet Website Warning.** A warning may be given in conjunction
11 with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on
12 which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the
13 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
14 during the checkout process. The following warning statement shall be used and shall appear in any
15 of the above instances adjacent to or immediately following the display, description, or price of the
16 Product for which it is given in the same type size or larger than the Product description text:

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

19 Alternatively, the designated symbol may appear adjacent to or immediately following the
20 display, description, or price of the Product for which a warning is being given, provided that the
21 following warning statement also appears elsewhere on the same web page, as follows:

22 **WARNING:** Products identified on this page with the
23 following symbol ▼ contain DEHP, a
24 phthalate chemical known to the State of
 California to cause birth defects and other
 reproductive harm

25 **2.2 Exceptions To Warning Requirements**

26 The warning requirements set forth in Section 2.1 shall not apply to:

27 (i) Any Product manufactured by ANG prior to the Effective Date; or
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1 (ii) Reformulated Products (as defined in Section 2.3 below).

2 **2.3 Reformulation Standards**

3 Reformulated Products are defined as those Products containing less than or equal to 1,000
4 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to Section 2.1
5 above shall not be required for Reformulated Products.

6 **2.4 Past and Future Reformulation Steps**

7 ANG hereby commits that one hundred percent (100%) of the Products that it manufactures
8 after the Effective Date shall qualify as Reformulated Products.

9 **3. MONETARY PAYMENTS**

10 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

11 In settlement of all claims related to the Products and Listed Chemical referred to in the
12 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), ANG shall
13 pay \$8,000 in civil penalties.

14 Civil penalties are to be apportioned in accordance with California Health & Safety Code
15 § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental
16 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony
17 Held as provided by California Health & Safety Code § 25249.12(d). ANG shall issue two separate
18 checks for the penalty payment: (a) one check made payable to “Chanler Law Group” in Trust for
19 OEHHA” in the amount of \$6,000 representing 75% of the total penalty; and (b) one check to
20 “Chanler Law Group” in Trust for Anthony Held” in the amount of \$2,000, representing 25% of the
21 total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box
22 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be
23 provided five calendar days before the payment is due.

24 Payment shall be delivered to Dr. Held’s counsel on or before December 15, 2009, at the
25 following address:

1 Chanler Law Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

4 **4. REIMBURSEMENT OF FEES AND COSTS**

5 **4.1 Attorney Fees and Costs**

6 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
8 issue to be resolved after the material terms of the agreement had been settled. ANG then expressed
9 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
10 The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his
11 counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the mutual
13 execution of this agreement. ANG, on behalf of itself and those in its chain of distribution, shall
14 reimburse Dr. Held and his counsel a total of \$32,000 for fees and costs incurred as a result of
15 investigating, bringing this matter to ANG's attention, and litigating and negotiating a settlement in
16 the public interest. ANG shall issue a separate 1099 for fees and costs (EIN: 20-3929984), and shall
17 make two equal checks of \$16,000 payable to "Chanler Law Group" for delivery by the Effective
18 Date and by February 13, 2010, respectively, to:

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

22 **4.2 Attorney Fees and Costs**

23 Pursuant to CCP §§ 1021 and 1021.5, the parties further agree that ANG will reimburse Dr.
24 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this
25 settlement in the trial court and completing other necessary tasks after the execution of the Consent
26 Judgment, in an amount not to exceed \$5,000. Such additional fees and costs, exclusive of fees and
27 costs that may be incurred in the event of an appeal (in which case, Section 6 shall apply) include, but
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1 are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
2 requirements referenced in Health & Safety Code § 25249.7(f), responding to any third party
3 objections, filing of the notice of entry of the Consent Judgment, corresponding with opposing
4 counsel and appearing before the Court related to the approval process.

5 Reimbursement of such additional fees and costs shall be invoiced on a billing statement from
6 Dr. Held (“Additional Fee Claim”) to counsel for ANG following the approval and entry of this
7 Consent Judgment by the Court, and payment shall be due within ten (10) calendar days after notice
8 of entry thereof. Payment of the Additional Fee Claim shall be made to “Chanler Law Group,” and
9 the payment shall be delivered, at the following address:

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

15 **5. RELEASE OF ALL CLAIMS**

16 **5.1 Dr. Held’s Release of ANG**

17 In further consideration of the promises and agreements herein contained, and for the
18 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
19 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
20 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
21 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
22 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
23 expenses (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any
24 nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against
25 ANG and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers,
26 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
27 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
28 and employees, and sister and parent entities (collectively “Releasees”). This release is limited to

1 those claims that arise under Proposition 65, as such claims relate to ANG's alleged failure to warn
2 about exposures to or identification of DEHP contained in the Products.

3 The Parties further understand and agree that the above releases shall not extend upstream to
4 any entities that manufactured the Products or any component parts thereof, or any distributors or
5 suppliers who sold the Products or any component parts thereof to ANG.

6 **5.2 ANG Release of Dr. Held**

7 ANG waives any and all claims against Dr. Held, his attorneys and other representatives, for
8 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
9 Held and his attorneys and other representatives, whether in the course of investigating claims or
10 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
11 Products.

12 **6. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and shall
14 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
15 has been fully executed by all parties, in which event any monies that have been provided to Dr.
16 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
17 (15) days after receiving written notice from ANG that the one-year period has expired.

18 **7. SEVERABILITY**

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

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
25 otherwise rendered inapplicable by reason of law generally, or as to the Products, then ANG provide
26 written notice to Dr. Held of any asserted change in the law, and shall have no further obligations
27 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
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1 Nothing in this Consent Judgment shall be interpreted to relieve ANG from any obligation to comply
2 with any pertinent state or federal toxics control laws.

3 **9. NOTICES**

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

8 For ANG:

9 Steven M. Gerber, Esq.
10 666 Fifth Avenue
11 26th Floor
12 New York, NY 10103

13 For Dr. Held:

14 Proposition 65 Coordinator
15 Chanler Law Group
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

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

21 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
23 be deemed an original, and all of which, when taken together, shall constitute one and the same
24 document.

25 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Dr. Held agrees to comply with the reporting form requirements referenced in California
27 Health & Safety Code §25249.7(f).

28 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such

1 approval, Dr. Held and ANG and their respective counsel agree to mutually employ their best efforts
2 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
3 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
4 at a minimum, cooperating on the drafting and filing any papers in support of the required motion for
5 judicial approval.

6 **13. MODIFICATION**

7 This Consent Judgment may be modified only: (1) by written agreement of the parties and
8 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
9 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
10 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
11 advance of its consideration by the Court.

12 **14. AUTHORIZATION**

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

15
16 **AGREED TO:**

AGREED TO:

17 Date:

APPROVED
By Tony Held at 9:57 am, Dec 08, 2009

18 Date: 12-7-09

19 By:

Anthony E. Held
Anthony E. Held, Ph.D, P.E.

20 By:

Joey Chehebar
Joey Chehebar, Executive Vice President,
ACCESSORY NETWORK GROUP LLC

21 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

22 Date:

Dec. 10, 2009

23 Date:

24 By:

DL
CHANLER LAW GROUP
David Lavine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

25 By:

Steven M. Gerber
Steven M. Gerber, Esq.
Attorney for Defendant
ACCESSORY NETWORK GROUP LLC

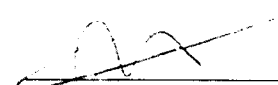
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3 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
4 at a minimum, cooperating on the drafting and filing any papers in support of the required motion for
5 judicial approval.

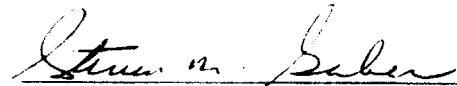
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10 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
11 advance of its consideration by the Court.

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

15		
16	AGREED TO:	AGREED TO:
17	Date: _____	Date: <u>12-7-09</u>
18		
19	By: _____	By: 
20	Anthony E. Held, Ph.D, P.E.	Joey Chenebar, Executive Vice President, ACCESSORY NETWORK GROUP LLC

21		
22	APPROVED AS TO FORM:	APPROVED AS TO FORM:
23	Date: _____	Date: <u>12-9-09</u>
24	CHANLER LAW GROUP	
25	By: _____	By: 
26	David Lavine Attorneys for Plaintiff	Steven M. Gerber, Esc. Attorney for Defendant
27	ANTHONY E. HELD, Ph.D., P.E.	ACCESSORY NETWORK GROUP LLC

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT