

1 Laurence D. Haveson, State Bar No. 152631
Christopher M. Martin, State Bar No. 186021
2 HIRST & CHANLER LLP
Parker Plaza
3 2560 Ninth Street, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
8 Including Professional Corporations
M. ELIZABETH McDANIEL, State Bar No. 114918
9 MICHELLE J. HIRTH, State Bar No. 200024
Four Embarcadero Center, 17th Floor
10 San Francisco, California 94111-4109
Telephone: (415) 434-9100
11 Facsimile: (415) 434-3947

12 Attorneys for Defendant
ENCHANTÉ ACCESSORIES, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SACRAMENTO
16 UNLIMITED CIVIL JURISDICTION
17

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

19 Plaintiff,

20 v.

21 ENCHANTÉ ACCESSORIES, INC. ;
22 MICHAELS STORES, INC., and DOES 1
through 150, inclusive,

23 Defendants.
24

Case No. 2008-00003275

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Enchanté Accessories, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Dr. Held" or "Plaintiff") and defendant Enchanté Accessories, Inc. ("Enchanté" or
5 "Defendant"), with Plaintiff and Defendant collectively referred to as the "Parties" and each
6 individually referred to as a "Party."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Enchanté employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code §25249.6 *et seq.* (Proposition 65).

15 **1.4 General Allegations**

16 Dr. Held alleges that Enchanté has manufactured, distributed and/or sold vinyl bathroom
17 animals/children's items containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of
18 California without the requisite health hazard warnings. DEHP is known to cause birth defects
19 and other reproductive harm and is listed by its chemical nomenclature pursuant to Proposition 65.
20 DEHP listed by the State of California under Proposition 65 shall be referred to hereinafter as the
21 "Listed Chemical."

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: vinyl
24 bathroom animals containing the plasticizer phthalate DEHP, such as but not limited to the *Life is*
25 *a Beach White Pineapple Body Soap w/ Duck (#7 29016 05734 0)* which Defendant manufactured,
26 distributed, and/or sold in the State of California. All such vinyl bathroom animals containing
27 DEHP are referred to hereinafter as the "Products".

28

1 **1.6 Notice of Violation**

2 On November 20, 2007, Dr. Held served Enchanté and various public enforcement
3 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided
4 Enchanté and public enforcers with notice of alleged violations of California Health & Safety
5 Code §25249.6 for failing to warn consumers that the Products exposed users in California to
6 DEHP.

7 **1.7 Complaint**

8 On February 11, 2008, Dr. Held, who was and is acting in the interest of the general public
9 in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
10 County of Sacramento against Enchanté Accessories, Inc.; Michaels Stores, Inc.; and Does 1
11 through 150, alleging violations of California Health & Safety Code §25249.6 based on the
12 alleged exposures to DEHP contained in the Products.

13 **1.8 No Admission**

14 Enchanté denies the material factual and legal allegations contained in Dr. Held's Notice
15 and Complaint, and maintains that all Products sold and distributed in California have been and
16 are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
17 admission by Enchanté of any fact, finding, issue of law, or violation of law, nor shall compliance
18 with this Consent Judgment constitute or be construed as an admission by Enchanté of any fact,
19 finding, conclusion, issue of law, or violation of law, such being specifically denied by Enchanté.
20 However, this Section shall not diminish or otherwise affect Enchanté's obligations,
21 responsibilities, and duties under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Enchanté as to the allegations contained in the Complaint, that venue is proper in
25 the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions
26 of this Consent Judgment.

27
28

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning, the following statement must be used:¹

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

7 [list products for which warning is required]

8 **2.2 Product Sales Confirmation**

9 Enchanté represents that, as a direct result of the Notice issued by Held on November 20,
10 2007, it immediately discontinued the sale of the Products into California. In addition, Enchanté
11 represents that its known customer and retailer was made aware of the presence of DEHP and the
12 requirements of Proposition 65 at that time.

13 **3. MONETARY PAYMENTS**

14 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

15 In settlement of all the claims referred to in this Consent Judgment, Enchanté shall pay
16 \$9,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
17 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
18 Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty remitted to
19 Anthony Held as provided by California Health & Safety Code §25249.12(d). Enchanté shall
20 issue two separate checks for the penalty payment: (a) one check made payable to Hirst &
21 Chanler LLP in Trust For OEHHA in the amount of \$6,750, representing 75% of the total penalty;
22 and (b) one check to Hirst & Chanler LLP in Trust for Anthony Held in the amount of \$2,250,
23 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
24 (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held,
25 whose information shall be provided five calendar days before the payment is due.

26 _____
27 ¹For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are
28 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 Payment shall be delivered to Dr. Held's counsel on or before November 14, 2008 at the
2 following address:

3 HIRST & CHANLER LLP
4 Attn: Proposition 65 Controller
5 455 Capitol Mall, Suite 605
6 Sacramento, CA 95814

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

8 **4.1 Attorney Fees and Costs.**

9 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Enchanté
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
13 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
14 to Dr. Held and his counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed
16 through the mutual execution of this agreement. Enchanté shall reimburse Dr. Held and his
17 counsel for fees and costs incurred as a result of investigating, bringing this matter to Enchanté's
18 attention, and litigating and negotiating a settlement in the public interest. Enchanté shall pay Dr.
19 Held and his counsel \$27,000 for all attorneys' fees and costs. Enchanté shall issue a separate
20 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to Hirst & Chanler
21 LLP and shall be delivered on or before November 14, 2008, to the following address:

22 HIRST & CHANLER LLP
23 Attn: Proposition 65 Controller
24 455 Capitol Mall, Suite 605
25 Sacramento, CA 95814

26 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

27 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Enchanté will reimburse Dr.
28 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
this settlement agreement in the trial court and performing other necessary tasks after the
execution of this agreement, in an amount not to exceed \$11,000. Such additional fees and costs,

1 exclusive of fees and costs that may be incurred in the event of an appeal include, but are not
2 limited to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements
3 referenced in Health & Safety Code §25249.7(f), corresponding with opposing counsel regarding
4 to any third party objections, filing a notice of entry of approval, and appearing before the Court
5 related to the approval process.

6 Reimbursement of such additional fees and costs shall be due within ten days after receipt
7 of a billing statement from Dr. Held (☐Additional Fee Claim☐). Payment of the Additional Fee
8 Claim shall be made to ☐Hirst & Chanler LLP,☐ and the payment shall be delivered, at the
9 following address:

10 HIRST & CHANLER LLP
11 Attn: Proposition 65 Controller
12 Capitol Mall Complex
13 455 Capitol Mall, Suite 605
14 Sacramento, CA 95814

15 Enchanté has the right to object to such reimbursement and may submit the resolution of
16 this issue to the American Arbitration Association (AAA) in Northern California to determine the
17 reasonableness of the additional fees and costs sought, provided that a notice of objection or
18 decision to arbitrate is received by Dr. Held by the end of ten calendar days after receipt by
19 Enchanté of the billing statement from Dr. Held. If an arbitration notice is not filed with AAA in a
20 timely manner, Dr. Held may file a motion with the Court pursuant to both CCP §1021.5 and this
21 settlement agreement to recover additional attorney fees and costs incurred as set forth in this
22 paragraph.

23 **5. RELEASE OF ALL CLAIMS**

24 **5.1 Dr. Held's Release of Enchanté and Michaels Stores**

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
27 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
28 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

1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
2 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
3 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
4 contingent (collectively "claims"), against Enchanté and against Michaels Stores, Inc. and each of
5 Enchanté's and Michaels Stores, Inc.'s downstream wholesalers, licensors, licensees, auctioneers,
6 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
7 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
8 shareholders, agents, and employees, and sister and parent entities (collectively "releasees"). This
9 release is limited to those claims that arise under Proposition 65 as such claims relate to
10 Enchanté's and Michaels Stores, Inc.'s alleged failure to warn about exposures to the Listed
11 Chemical contained in the Products. Within five business days of the Court approval of this
12 agreement, Dr. Held shall dismiss Michaels Stores, Inc. from the case without prejudice.

13 The Parties further understand and agree that this release shall not extend upstream to any
14 entities, other than Enchanté, that manufactured the Products or any component parts thereof or to
15 any distributors or suppliers who sold the Products or any component parts thereof to Enchanté.

16 **5.2 Enchanté's Release of Dr. Held**

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

22 **6. 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, in which event any monies that have been provided
26 to Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within
27 fifteen (15) days after receiving written notice from Enchanté that the one-year period has expired.

28

1 7. **SEVERABILITY**

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

5 8. **GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Enchanté
9 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
10 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Products are so affected.

12 9. **NOTICES**

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

17 To Enchanté:

18 M. Elizabeth McDaniel, Esq.
19 SHEPPARD MULLIN RICHTER & HAMPTON LLP
20 4 Embarcadero Center, 17th Floor
San Francisco, CA 94111

21 To Dr. Held:

22 Proposition 65 Coordinator
HIRST & CHANLER LLP
23 2560 Ninth Street
Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

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

27
28

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a Motion to
10 Approve the Agreement (Noticed Motion) is required to obtain judicial approval of this Consent
11 Judgment. In furtherance of obtaining such approval, Dr. Held, Enchanté and their respective
12 counsel agree to mutually employ their best efforts to support the entry of this agreement as a
13 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
14 For purposes of this Paragraph, best efforts shall include at a minimum that Enchanté join in or
15 file a joinder in the Noticed Motion and participate in any oral argument before the Court on the
16 hearing of the Noticed Motion.

17 **13. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the parties and
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
20 of any party and entry of a modified Consent Judgment by the court. The Attorney General shall
21 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
22 days in advance of its consideration by the Court. Dr. Held shall be entitled to his reasonable fees
23 and costs incurred in the modification process under CCP §1021.5 if Enchanté seeks to modify the
24 terms of this Consent Judgment.

25 ///

26 ///

27 ///

28

1 **14. AUTHORIZATION**

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

6 **AGREED TO:**

AGREED TO:

7 Date: **APPROVED**
By Anthony E Held at 12:07 pm, 11/5/08

Date: _____

8
9 By: *Anthony E Held*
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

By: _____
Defendant ENCHANTE ACCESSORIES,
INC.

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: _____
13 HIRST & CHANLER LLP

Date: _____
14 SHEPPARD MULLIN RICHTER &
15 HAMPTON LLP

16 By: _____
17 Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Michelle Hirth
Attorneys for Defendant
ENCHANTE ACCESSORIES, INC

18 **IT IS SO ORDERED.**

19
20
21 Date: _____

22 JUDGE OF THE SUPERIOR COURT

23
24
25
26
27
28

1 **14. AUTHORIZATION**

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

6 **AGREED TO:**

AGREED TO:

7 Date: _____

Date: _____

9 By: _____
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.


By: _____
Defendant ENCHANTE ACCESSORIES,
INC.

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: 11/7/08
13 HIRST & CHANLER LLP

Date: _____
SHEPPARD MULLIN RICHTER &
HAMPTON LLP

15 By: 
16 Christopher M. Martin
17 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Michelle Hirth
Attorneys for Defendant
ENCHANTE ACCESSORIES, INC

19 **IT IS SO ORDERED.**

21 Date: _____

22 JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

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

6 **AGREED TO:**

7 Date: _____

9 By: _____
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

AGREED TO:

7 Date: 11/7/08

9 By: 
10 Defendant ENCHANTE ACCESSORIES,
INC.

11 **APPROVED AS TO FORM:**

12 Date: _____
13 HIRST & CHANLER LLP

15 By: _____
16 Christopher M. Martin
17 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

12 Date: _____
13 SHEPPARD MULLIN RICHTER &
14 HAMPTON LLP

15 By: _____
16 Michelle Hirth
17 Attorneys for Defendant
ENCHANTE ACCESSORIES, INC

19 **IT IS SO ORDERED.**

21 Date: _____

22 _____
23 JUDGE OF THE SUPERIOR COURT

1 **14. AUTHORIZATION**

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

6 **AGREED TO:**

AGREED TO:

7 Date: _____

Date: _____

9 By: _____
10 Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

By: _____
Defendant ENCHANTE ACCESSORIES,
INC.

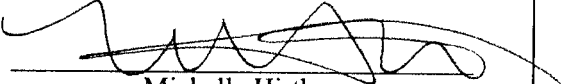
11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 Date: _____
13 HIRST & CHANLER LLP

Date: _____
SHEPPARD MULLIN RICHTER &
HAMPTON LLP

15 By: _____
16 Christopher M. Martin
17 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By:  _____
Michelle Hirth
Attorneys for Defendant
ENCHANTE ACCESSORIES, INC

19 **IT IS SO ORDERED.**

21 Date: _____

JUDGE OF THE SUPERIOR COURT