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SACRAMENTO COURTS
DEPT. #53

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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SACRAMENTO
14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 FAST FORWARD, LLC; and DOES 1
19 through 150, inclusive,

20 Defendants.

Case No. 34-2009-00035045

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT**

Date: September 28, 2009
Time: 2:00 p.m.
Dept.: 53
Judge: Hon. Loren E. McMaster


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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant FAST FORWARD, LLC, having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed] Consent Judgment entered into by the parties, and following issuance of an order approving this Proposition 65 settlement agreement and entering the Consent Judgment on September 28, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.6, judgment is entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1.

IT IS SO ORDERED.

Dated: SEP 28 2009



JUDGE OF THE SUPERIOR COURT
LOREN E. McMASTER

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
David Lavine, State Bar No. 166744
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
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5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

7 Malcolm C. Weiss, State Bar No. 112476
8 Catherine Allen, State Bar No. 211574
HUNTON & WILLIAMS LLP
9 550 South Hope Street, Suite 2000
Los Angeles, California 90071
10 Telephone: (213) 532-2000
Facsimile: (213) 532-2020

11 Attorneys for Defendant
12 FAST FORWARD, LLC

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

18 ANTHONY E. HELD, Ph.D., P.E.,
19 Plaintiff,
20 v.
21 FAST FORWARD, LLC; and DOES 1 through
22 150, inclusive,
23 Defendants.

Case No. 34-2009-00035045

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Fast Forward, LLC.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph D., P.E
4 (hereinafter "Dr. Held") and Fast Forward, LLC. (hereinafter "Fast Forward"), with Dr. Held and
5 Fast Forward 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 Fast Forward 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 §25249.5, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: children's
22 vinyl bags containing the Listed Chemical including, but not limited to, *Spider-Man 3 Bag*,
23 *SPEC129C (#8 40716 06027 7)*. All such items shall be referred to herein as the "Products."

24 **1.6 Notice of Violation**

25 On or about October 10, 2008, Dr. Held served Fast Forward and various public enforcement
26 agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Fast
27 Forward and such public enforcers with notice that alleged that Fast Forward was in violation of
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1 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the
2 Products exposed users in California to the Listed Chemical. No public enforcer has diligently
3 prosecuted the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On February 20, 2009, Dr. Held, who was and is acting in the interest of the general public in
6 California, in the Superior Court in and for the County of Sacramento, filed a complaint against Fast
7 Forward as a defendant and alleging violations of Health & Safety Code §25249.6 by Fast Forward
8 based on the alleged exposures to the Listed Chemical contained in the Products manufactured,
9 distributed and/or offered for sale in California by Fast Forward (“Complaint”).

10 **1.8 No Admission**

11 Fast Forward denies the material factual and legal allegations contained in Dr. Held’s Notice
12 and Complaint, and maintains that all products that it has sold and distributed in California, including
13 the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall
14 be construed as an admission by Fast Forward of any fact, finding, issue of law, or violation of law;
15 nor shall compliance with this Consent Judgment constitute or be construed as an admission by Fast
16 Forward of any fact, finding, conclusion, issue of law or violation of law, such being specifically
17 denied by Fast Forward. However, this section shall not diminish or otherwise affect the obligations,
18 responsibilities and duties of Fast Forward under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Fast Forward as to the allegations contained in the Complaint, that venue is proper
22 in the County of Sacramento, and that this Court has jurisdiction to enter and enforce the provisions
23 of this Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 31, 2009.
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1 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2 **2.1 Reformulation Commitment**

3 As of the Effective Date, Fast Forward shall only manufacture or cause to be manufactured,
4 Products for sale in California that are Phthalate Free, as set forth below. For purposes of this
5 Consent Judgment, "Phthalate Free" Products shall mean Products containing less than or equal to
6 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental
7 Protection Agency ("EPA") testing methodologies 3580A and 8270C or any other method allowed by
8 a federal or state agency to assess the content of DEHP in a consumer product.

9 Fast Forward hereby commits that 50% of the Products that it ships for sale in California after
10 the Effective Date shall be Phthalate Free. Fast Forward further commits that 100% of the Products
11 that it offers for sale in California after August 15, 2009 shall be Phthalate Free. Nothing in this
12 Consent Judgment shall be interpreted to relieve Fast Forward from any obligation to comply with
13 any pertinent state or federal toxics control laws (e.g., the federal ban on selling childcare items and
14 certain children's toys containing more than 1,000 ppm of DEHP).

15 **2.2 Product Warnings**

16 After August 15, 2009, Fast Forward shall not sell in or ship to California, Products
17 containing the Listed Chemical unless such Products are shipped with the clear and reasonable
18 warnings set out in Sections 2.3 and 2.4 or comply with the reformulation requirements of Phthalate
19 Free Products set out in Section 2.1 above. Any warning issued for Products pursuant to Sections 2.3
20 and 2.4, below, shall be prominently placed with such conspicuousness as compared with other
21 words, statements, designs or devices as to render it likely to be read and understood by an ordinary
22 individual under customary conditions before purchase or, for Products shipped directly to an
23 individual in California, before use.

24 **2.3 Warnings For Retail Store Sales**

25 **(a) Product Labeling.** Fast Forward may perform its warning obligation
26 by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product
27 sold in retail outlets in California by Fast Forward or its agents, that states:

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

(b) Point-of-Sale Warnings. Fast Forward may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that state:

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Phthalate Free as defined in Section 2.1), the following statement must be used:¹

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

[list products for which warning is required]

2.4 Warnings For Mail Order Catalog and Internet Sales

Fast Forward shall satisfy its warning obligations for Products sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in subsections (a) and (b) below.

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

¹ For purposes of this Consent Judgment, "sold in proximity to other like items" shall mean that the Product and another product are offered for sale close enough to each other so that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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

Where it is impracticable to provide the warning on the same page and in the same location as the display of the Product, Fast Forward may utilize a designated symbol (▲) to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog and on the same page as any order form for the Product(s):

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

The designated symbol must appear on the same page and in close proximity to the display or description of the Product on such page. On each page where the designated symbol appears, Fast Forward must provide a reference directing the consumer to the warning language and definition of the designated symbol. If Fast Forward elects to sell one or more Products to consumers via mail order catalog after the Effective Date, then the warnings must be included in all catalogs containing the Products which are distributed in California as of the Effective Date.

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

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the

1 following warning statement also appears elsewhere on the same web page, as follows:

2 **WARNING:** Products identified on this page with the
3 following symbol ▲ contain DEHP, a phthalate
4 chemical known to the State of California to
 cause birth defects and other reproductive harm.

5 **2.5 Exceptions To Warning Requirements**

6 The warning requirements set forth in Sections 2.2 through 2.4 shall not apply to Phthalate
7 Free Products (as defined in Section 2.1).

8 **3. MONETARY PAYMENTS**

9 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

10 In settlement of all the claims referred to in this Consent Judgment, Fast Forward shall pay
11 \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
12 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
13 Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided
14 by California Health & Safety Code §25249 12(d). Fast Forward shall pay the civil penalties in five
15 equal monthly installments of \$400 each, and shall issue two separate checks for each monthly
16 payment as follows: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
17 California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for
18 OEHHA") in the amount of \$300 (for a total of \$1,500), representing 75% of the total penalty and (b)
19 one check to "Hirst & Chanler LLP in Trust for A. Held" in the amount of \$100 (for a total of \$500),
20 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments:
21 The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
22 0284486) in the amount of \$1,500. The second 1099 shall be issued to Dr. Held in the amount of
23 \$500, whose address and tax identification number shall be furnished, upon request, at least five
24 calendar days before payment is due. The payments shall be delivered on or before August 15, 2009;
25 September 15, 2009; October 15, 2009; November 15, 2009; and December 15, 2009, at the
26 following address:

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1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710

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

5 **4.1 Attorney Fees and Costs.**

6 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
7 private attorney general doctrine and principles of contract law. Under these legal principles, Fast
8 Forward shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating,
9 bringing this matter to Fast Forward's attention, and negotiating a settlement in the public interest.
10 Fast Forward shall pay Dr. Held and his counsel \$17,900 for all attorneys' fees, expert and
11 investigation fees, and related costs. The payment shall be issued in five equal monthly installments
12 of \$3580 each. The payments shall be delivered on or before August 15, 2009; September 15, 2009;
13 October 15, 2009; November 15, 2009; and December 15, 2009, at the following address:

14 Hirst & Chanler LLP
15 Attn: Proposition 65 Controller
2560 Ninth Street
16 Parker Plaza, Suite 214
Berkeley, CA 94710

17 Fast Forward shall issue a separate 1099 for fees and cost paid in the amount of \$17,900 to
18 Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-
19 3929984).

20 **5. RELEASE OF ALL CLAIMS**

21 **5.1 Dr. Held's Release of Fast Forward**

22 In further consideration of the promises and agreements herein contained, and for the
23 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
24 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
25 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
26 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
27 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
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1 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
2 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
3 Fast Forward and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
4 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
5 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
6 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
7 release is limited to those claims that arise under Proposition 65, as such claims relate to Fast
8 Forward's alleged failure to warn about exposures to or identification of DEHP contained in the
9 Products.

10 In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents,
11 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity,
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
13 and releases all Claims against Fast Forward and each of its Releasees. This additional release,
14 which Dr. Held is providing in his individual capacity, is limited to those Claims that arise with
15 respect to Proposition 65, as such Claims relate to Fast Forward's alleged failure to warn about
16 exposures to or identification of any chemicals listed under Proposition 65 contained in any products
17 sold by Fast Forward.

18 **5.2 Fast Forward's Release of Dr. Held**

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

24 **5.3 Civil Code §1542 Waiver**

25 All parties acknowledge and agree that they are aware of and understand the provisions of
26 Code of Civil Procedure Section 1542 and hereby knowingly and voluntarily waive the benefits of
27 that section which provides, "A general release does not extend to claims which the creditor does not
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1 know or suspect to exist in his or her favor at the time of executing the release, which if known by
2 him or her must have materially affected his or her settlement with the debtor.”

3 **6. COURT APPROVAL**

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

9 **7. SEVERABILITY**

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

13 **8. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
15 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
16 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Fast Forward
17 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
18 that, the Products are so affected.

19 **9. NOTICES**

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

24 For Fast Forward:

25 Malcolm Weiss
26 Catherine Allen
27 Hunton & Williams LLP
28 South Hope Street, Suite 2000
Los Angeles, CA 90071

1 For Dr. Held:

2 Proposition 65 Coordinator
3 Hirst & Chanler LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

16 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
18 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
19 approval, Dr. Held and Fast Forward agree to mutually employ their best efforts to support the entry
20 of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
21 in a timely manner.

22 **13. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the parties and
24 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
25 any party and entry of a modified consent judgment by the Court.
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14. AUTHORIZATION

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 hereof.

<p>APPROVED By Anthony E Held at 11:29 am, 7/29/09</p>	<p>AGREED TO: Date: _____</p>
<p>By <u>Anthony E Held</u> Anthony Held</p>	<p>By: _____ Evan Hedaya, President Fast Forward, LLC.</p>

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT

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14. AUTHORIZATION

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 hereof.

AGREED TO:	AGREED TO:
Date: _____	Date: <u>1/19/07</u>
By: _____ Anthony Held	By: <u>Evan Hedaya</u> Evan Hedaya, President Fast Forward, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT