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Attorneys for Plaintiff  
ANTHONY E. HELD, PHD., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PHD., P.E.,  
Plaintiff,  
v.  
FOX HEAD, INC.; *et al.*,  
Defendants.

Case No. CGC-11-511835

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between Anthony E. Held, PhD., P.E.  
4     ("Held") and Fox Head, Inc. ("Fox Head"), with Held and Fox Head collectively referred to as the  
5     "Parties."

6             **1.2 Plaintiff**

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

10            **1.3 Defendant**

11            Fox Head 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 &  
13     Safety Code § 25249.6 *et seq.* ("Proposition 65").

14            **1.4 General Allegations**

15            Held alleges that Fox Head has manufactured, distributed, and/or offered for sale in  
16     California cosmetic cases/bags containing di(2-ethylhexyl)phthalate ("DEHP") in California  
17     without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a  
18     chemical known to the state of California to cause birth defects and other reproductive harm.

19            **1.5 Product Description**

20            The products that are covered by this Consent Judgment are cosmetic cases/bags containing  
21     DEHP that are manufactured, sold and/or distributed in California by Fox Head, including, without  
22     limitation, the *Fox Girls First Class Fly Cosmetic Pack, #59294-579-000 (#8 84065 95003 2)*  
23     (collectively "Products").

24            **1.6 Notice of Violation**

25            On April 8, 2011, Held served Fox Head and various public enforcement agencies with a 60-  
26     Day Notice of Violation ("Notice"), a document that informed the recipients that Fox Head was  
27     alleged to be in violation of Proposition 65 for failing to warn its customers and consumers in  
28     California that the Products expose users to DEHP.

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**1.7 Complaint**

On June 20, 2011, Held filed the instant action (“Complaint”), against Fox Head for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

**1.8 No Admission**

Fox Head denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it has sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Fox Head of any fact, finding, 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 Fox Head of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Fox Head. This Section shall not, however, diminish or otherwise affect Fox Head’ obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Fox Head as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

**1.10 Effective Date**

As used throughout this Consent Judgment, the term “Effective Date” shall mean January 23, 2012.

**2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

**2.1 Reformulation**

**2.1.1 Reformulation Standard.**

For purposes of this Consent Judgment “Reformulation Standard” shall mean a maximum DEHP content of 1,000 parts per million in an component part of a Product analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent method utilized by state or federal agencies to determine DEHP content in a solid substance.

1                                   **2.1.2 Vendor Notification**

2                                   No more than 30 days after the date that this Consent Judgment is fully executed by  
3 the Parties, Fox Head shall provide the Reformulation Standard to each of its then-current vendors  
4 of Products that will be sold or offered for sale to California consumers, and shall instruct each  
5 vendor to use reasonable efforts to provide only Products that comply with the Reformulation  
6 Standard expeditiously. In communicating the obligation set forth in the preceding sentence to its  
7 vendor(s), Fox Head shall not employ statements to encourage a vendor to delay compliance with  
8 the Reformulation Standard. Upon request, Fox Head shall provide Held with copies of its vendor  
9 notification(s), and Held shall regard such copies as confidential business information.

10                                   **2.1.3 Compliance Deadline**

11                                   Commencing on December 31, 2012 and continuing thereafter, Fox Head shall only  
12 purchase, import, manufacture, or supply to an unaffiliated third party for sale in California,  
13 Products that comply with the Reformulation Standard established by this Section or that are sold  
14 with a clear and reasonable warning in accordance with Section 2.2.

15                                   **2.1.4 Products Sold Prior to Compliance Deadline**

16                                   Provided that Fox Head has complied with the vendor notification and reformulation  
17 requirements established by Sections 2.1.1 and 2.1.2 above, sales of Products purchased, imported,  
18 manufactured, or supplied to unaffiliated third parties prior to the compliance deadline set forth in  
19 subsection 2.1.3 above shall not be separately actionable in another case brought pursuant to  
20 Section 25249.7(d) of the Health and Safety Code alleging unwarned exposures to DEHP under  
21 Proposition 65.

22                                   **2.2 Product Warnings**

23                                   For all Products sold in California that do not comply with the Reformulation Standard  
24 established by Section 2.1, provided that Fox Head has complied with the vendor notification  
25 requirements of Section 2.2, Fox Head may sell such Products with the clear and reasonable warnings  
26 set forth in subsections 2.2(a) and (b). Each warning shall be prominently placed with such  
27 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
28 to be read and understood by an ordinary individual under customary conditions before purchase or

1 use. Each warning shall be provided in a manner such that the consumer or user understands to  
2 which specific Product the warning applies, so as to minimize the risk of consumer confusion.

3 (a) **Retail Store Sales**

4 (i) **Product Labeling.** Avenues shall affix a warning to the packaging,  
5 labeling, or directly on each Product sold in retail outlets in California by Avenues or any person  
6 selling the Products, that states:

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

10 (ii) **Point-of-Sale Warnings.** Alternatively, Avenues may provide  
11 warning signs in the form below to its customers in California with instructions to post the  
12 warnings in close proximity to the point of display of the Products. Such instruction sent to  
13 Avenues's customers shall be sent by certified mail.

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

17 Where more than one Product is sold in proximity to other like items or to those that do not  
18 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement  
19 must be used:<sup>1</sup>

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

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

24 (b) **Mail Order Catalog and Internet Sales.** In the event that Avenues sells  
25 Products via mail order catalog and/or the internet, to customers located in California, after the  
26 Effective Date, and that are not Reformulated Products, Avenues shall provide a warning for such

27 <sup>1</sup> For 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 Products sold via mail order catalog or the internet to California residents: (1) in the mail order  
2 catalog; or (2) on the website. Warnings given in the mail order catalog or on the internet shall  
3 identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i)  
4 and (ii).

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

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

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

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

22 The designated symbol must appear on the same page and in close proximity to the display  
23 and/or description of the Product. On each page where the designated symbol appears, Avenues must  
24 provide a header or footer directing the consumer to the warning language and definition of the  
25 designated symbol.

26 (ii) **Internet Website Warning.** A warning may be given in conjunction  
27 with the sale of the Products by Fox Head via the internet, when the sale is to a consumer in  
28 California, provided it appears either: (a) on the same web page on which a Product is displayed; (b)  
on the same web page as the order form for a 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

1 or immediately following the display, description, or price of the Product for which it is given in the  
2 same type size or larger than the Product description text:

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

10 **WARNING:** Products identified on this page with the  
11 following symbol ▼ contain DEHP, a  
12 phthalate chemical known to the State of  
13 California to cause birth defects and other  
14 reproductive harm.

### 15 **3. MONETARY PAYMENTS**

#### 16 **3.1 Initial Civil Penalty**

17 Pursuant to Health & Safety Code § 25249.7(b), on or before the Effective Date, Fox Head  
18 shall pay a total of \$4,000 in civil penalties pursuant to Health & Safety Code section 25249.7(b).  
19 This amount reflects a penalty credit of \$6,000 agreed to by Held in response to Fox Head's  
20 commitment to Proposition 65 compliance, including notifying its vendors offering Products in  
21 compliance with the Reformulation Standard established by Section 2.

22 The civil penalty payment shall be allocated according to Health & Safety Code §  
23 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the  
24 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
25 twenty-five percent (25%) of the penalty amount earmarked for Held.

#### 26 **3.2 Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

27 On or before December 31, 2012, Fox Head shall pay a final civil penalty of \$12,000. As an  
28 incentive to offer only Products that comply with the Reformulation Standard, however, the final  
civil penalty shall be waived in its entirety if an Officer of Fox Head certifies in writing to Held's  
counsel that as of December 15, 2012, Fox Head will only sell or distribute for sale in California only  
Products that comply with the Reformulation Standard established by Section 2 of this Consent  
Judgment. Unless waived, the final civil penalty payment shall be apportioned in accordance with

1 California Health & Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the final  
2 penalty amount remitted to OEHHA and the remaining twenty-five percent (25%) remitted to Held.  
3 Payment of the final civil penalty shall be remitted to Held's counsel at the address set forth in  
4 Section 3.4.3.

### 5 **3.3 Reimbursement of Plaintiff's Fees and Costs**

6 The Parties acknowledge that 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 the issue  
8 to be resolved after the material terms of the agreement had been settled. Fox Head then expressed a  
9 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 Held and his  
11 counsel under general contract principles and the private attorney general doctrine codified at  
12 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees  
13 on appeal, if any. Under these legal principles, on or before the Effective Date, Fox Head shall pay  
14 \$31,000 for all fees and costs incurred investigating, litigating and enforcing this matter, including  
15 the fees and costs incurred (and yet to be incurred) drafting, negotiating, and obtaining the Court's  
16 approval of this Consent Judgment in the public interest.

### 17 **3.4 Payment Procedures**

#### 18 **3.4.1 Payments Held in Trust**

19 All payments made under this Consent Judgment shall be held in trust until the Court  
20 approves the settlement. The Parties acknowledge that Held's counsel gave Fox Head the option of  
21 depositing the funds into its attorney's trust account, but that Fox Head elected to have The Chanler  
22 Group hold the settlement funds in trust. Settlement funds delivered to The Chanler Group shall be  
23 in the form of three checks for the following amounts, made payable as follows:

- 24 (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of  
25 \$3,000;  
26 (b) a second check to "The Chanler Group in Trust for Anthony Held" in the  
27 amount of \$1,000; and  
28 (c) a third check to "The Chanler Group in Trust" in the amount of \$31,000.



1                   **3.4.2 Issuance of 1099 Forms**

2                   After the Consent Judgment has been approved, Fox Head shall issue three 1099  
3 forms for the payments made pursuant to Sections 3.1 and 3.3, as follows:

4                   (a)     one 1099 form to “Office of Environmental Health Hazard Assessment”, P.O.  
5                   Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid to  
6                   OEHHA in the amount of \$3,000;

7                   (b)     a second 1099 form to “Anthony Held”, whose address and tax identification  
8                   number shall be furnished upon request after this Consent Judgment has been fully  
9                   executed by the Parties, for civil penalties paid in the amount of \$1,000; and

10                  (c)     a third 1099 form to “The Chanler Group” (EIN: 94-3171522) for the  
11                  reimbursement of fees and costs in the amount of \$31,000.

12                  (d)     in the event the final civil penalty is not waived, a fourth 1099 form will be  
13                  required for payments made to OEHHA and Held under section 3.2. Fox Head shall  
14                  issue such form to Held’s counsel upon request after payment is made.

15                   **3.4.3 Payment Address**

16                   All payments and tax documents required by Sections 3.1, 3.3, and 3.4.2 shall be  
17 delivered to Held’s counsel at the following address:

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

23                   **5.     CLAIMS COVERED AND RELEASED**

24                   **5.1     Full, Final, and Binding Resolution of Proposition 65 Claims**

25                   This Consent Judgment is a full, final, and binding resolution between Held, on behalf of  
26                   himself and in the public interest, and Fox Head, of any violation of Proposition 65 that Held brought  
27                   or could have brought against Fox Head, its parents, subsidiaries, affiliated entities under common  
28                   ownership, directors, officers, employees, attorneys, and each entity to whom Fox Head directly or  
indirectly distributes or sells Products, including but not limited to, downstream distributors,

1 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees  
2 (“Releasees”), based on unwarned exposures to DEHP contained in the Products sold by Fox Head.

3 **5.2 Held’s Public Interest Release of Proposition 65 Claims**

4 In further consideration of the promises and agreements herein contained, Held on behalf of  
5 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in  
6 the public interest, hereby waives all rights to institute or participate in, directly or indirectly, any  
7 form of legal action and releases all claims, including, without limitation, all actions and causes of  
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
9 losses, or expenses, including, but not limited to, investigation fees, expert fees, and attorneys’ fees  
10 (collectively “Claims”) against Fox Head and the Releasees for unwarned exposures to DEHP  
11 contained in the Products sold by Fox Head.

12 **5.3 Held’s Individual Release of Claims**

13 Held, in his individual capacity only and *not* in his representative capacity, also provides a  
14 release to Fox Head and the Releasees which shall be effective as a full and final accord and  
15 satisfaction, as a bar to all Claims, liabilities, and demands of Held of any nature, character, or kind,  
16 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to  
17 DEHP contained in the Products.

18 **5.4 Fox Head’s Release of Held**

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

25 **6. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and  
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
28 after it has been fully executed by all Parties, in which event any monies that have been provided to

1 Held or his counsel pursuant to Section 3.1, 3.2 or 3.3 above shall be refunded within fifteen days  
2 after receiving written notice from Fox Head that the one-year period has expired and the Consent  
3 Judgment has not been approved and entered by the Court.

4 **7. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to  
6 be unenforceable, the validity of the provisions remaining shall not be adversely affected.

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California  
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
10 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Fox Head  
11 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
12 extent that, the Products are so affected.

13 **9. NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant to  
15 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class,  
16 registered, or certified mail, return receipt requested, or (iii) a recognized overnight courier to any  
17 party by the other party at the following addresses:

18 For Fox Head:

19 Tim Naylor, Esq.  
20 Vice President Legal and Strategic Development  
21 Fox Head, Inc.  
18400 Sutter Blvd.  
Morgan Hill, CA 95037

22 For Held:

23 Proposition 65 Coordinator  
24 The Chanler Group  
25 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

28

1 **10. COUNTERPARTS; FACSIMILE 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 **11. POST EXECUTION ACTIVITIES**

6 Held agrees to comply with the reporting form requirements referenced in California Health  
7 & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to California  
8 Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of  
9 this Consent Judgment. In furtherance of obtaining such approval, Held and Fox Head and their  
10 respective counsel agree to mutually employ their best efforts to support the entry of this agreement  
11 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
12 manner. For purposes of this section, “best efforts” shall include, at a minimum, cooperating on the  
13 drafting and filing of any papers in support of the required motion for judicial approval.

14 **12. MODIFICATION**

15 This Consent Judgment may be modified only: (i) by a written agreement of the Parties and  
16 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion of  
17 any party and entry of a modified consent judgment by the Court.

18 **13. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and have read,  
20 understood, and agree to all of the terms and conditions of this Consent Judgment.

21 **AGREED TO:**

22  
23 By: Anthony E. Held  
24 Anthony E. Held, PhD., P.E.

**AGREED TO:**

By: [Signature]  
Tim Naylor, V.P. Legal & Strategic Dev.  
Fox Head, Inc.

25 Date: **APPROVED**  
26 **By Tony at 9:55 am, Jan 18, 2012**

27 Date: 1/18/12  
28