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3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.,)
13 Plaintiff,)
14 v.)
15 JOE BENBASSET, INC.; and DOES 1-150,)
16 inclusive,)
17 Defendants.)
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Case No. CIV-1103514
[PROPOSED] CONSENT JUDGMENT
Dept:
Judge:
Date: None set
Complaint Filed: July 15, 2011

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Joe Benbasset, 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 Joe Benbasset, Inc. (“JBB” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

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

10 **1.3 Joe Benbasset, Inc.**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that JBB has manufactured, imported, distributed, sold and/or offered for
16 sale in the State of California belts that contain phthalates, including di(2-ethylhexyl)phthalate
17 (“DEHP”), without the requisite Proposition 65 warnings. DEHP is on the Proposition 65 list as
18 known to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: belts
21 containing DEHP including, but not limited to, *Joe Benbasset Skirt with Belt, Style 9208353 (#7*
22 *13550 43982 3)*, manufactured, imported, distributed, sold, and/or offered for sale by JBB,
23 hereinafter referred to as the “Products.”

24 **1.6 Notice of Violation**

25 On April 19, 2011, Dr. Held served JBB and various public enforcement agencies with a
26 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
27 notice of alleged violations of California Health & Safety Code § 25249.6 based on JBB’s alleged
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1 failure to warn consumers that the Products exposed users in California to DEHP. To the best of the
2 parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 15, 2011, Dr. Held filed a complaint in the Superior Court in and for the County of
5 Marin against Joe Benbasset, Inc. and Does 1 through 150, *Held v. Joe Benbasset, Inc., et al.*, Case
6 No. CIV-1103514 (the "Action"), alleging violations of California Health & Safety Code § 25249.6,
7 based on the alleged exposures to DEHP contained in certain belts sold by JBB.

8 **1.8 No Admission**

9 JBB denies the material, factual and legal allegations contained in Dr. Held's Notice and
10 Complaint and maintains that all products that it has sold, manufactured, imported, distributed,
11 and/or offered for sale in California, including the Products, have been and are in compliance with
12 all laws. Nothing in this Consent Judgment shall be construed as an admission by JBB of any fact,
13 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
14 constitute or be construed as an admission by JBB of any fact, finding, conclusion, issue of law, or
15 violation of law. However, this section shall not diminish or otherwise affect JBB's obligations,
16 responsibilities, and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the parties stipulate that this Court has
19 jurisdiction over JBB as to the allegations contained in the Complaint, that venue is proper in the
20 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
24 Consent Judgment is entered by the Court.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 Reformulated Products are defined as those Products containing DEHP in concentrations
4 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by
6 federal or state agencies for the purpose of determining the DEHP content in a solid substance.

7 **2.2 Reformulation Commitment**

8 As of the Effective Date, all Products manufactured, imported, distributed, sold or offered
9 for sale in the State of California by JBB shall be Products that qualify as Reformulated Products as
10 defined in Section 2.1 above.

11 **3. MONETARY PAYMENTS**

12 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 JBB shall make a payment of \$15,000 to be apportioned in accordance with Health &
14 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
15 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the
16 remaining 25% of these penalty monies earmarked for Dr. Held.

17 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

18 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
20 this fee issue to be resolved after the material terms of the agreement had been settled. JBB then
21 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
22 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
23 Held and his counsel under general contract principles and the private attorney general doctrine
24 codified at California Code of Civil Procedure section 1021.5, for all work performed in this
25 matter, except fees that may be incurred on appeal. Under these legal principles, JBB shall pay the
26 amount of \$30,000 for fees and costs incurred investigating, litigating and enforcing this matter,
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1 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
2 the Court's approval of this Consent Judgment in the public interest.

3 **3.3 Payment Procedures**

4 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall
5 be delivered on or before April 10, 2012, to the attorney of record for JBB pending the Court's
6 approval of this Consent Judgment.

7 Payments delivered to Mennemeier, Glassman & Stroud shall be made payable, as
8 follows:

- 9 (a) One check made payable to "Mennemeier, Glassman & Stroud LLP
10 in Trust for OEHHA" in the amount of \$11,250;
- 11 (b) One check made payable to "Mennemeier, Glassman & Stroud LLP
12 in Trust for Anthony E. Held, Ph.D., P.E." in the amount of \$3,750;
13 and
- 14 (c) One check made payable to "Mennemeier, Glassman & Stroud LLP
15 in Trust for The Chanler Group" in the amount of \$30,000.

16 JBB's attorney of record shall (a) confirm in writing, to Plaintiff's attorney of
17 record, within five (5) days of receipt that the funds have been deposited in a trust account; and (b)
18 within ten (10) business days of the Effective Date, deliver the payment to The Chanler Group in
19 three separate checks as follows:

- 20 (a) One check made payable to "The Chanler Group in Trust for
21 OEHHA" in the amount of \$11,250;
- 22 (b) One check made payable to "The Chanler Group in Trust for
23 Anthony E. Held, Ph.D., P.E." in the amount of \$3,750; and
- 24 (c) One check made payable to "The Chanler Group" in the amount of
25 \$30,000.
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1 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 and the settlement funds have been transmitted to plaintiff's counsel, JBB shall issue three separate
3 1099 forms, as follows:

- 4 (a) The first 1099 shall be issued to the Office of Environmental Health
5 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN:
6 68-0284486) in the amount of \$11,250;
- 7 (b) The second 1099 shall be issued to Anthony E. Held, Ph.D., P.E. in
8 the amount of \$3,750, whose address and tax identification number
9 shall be furnished upon request; and
- 10 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
11 3171522) in the amount of \$30,000.

12 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
13 the following payment address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

19 Plaintiff acting on his own behalf and in the public interest releases JBB, its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
21 and each entity to whom JBB directly or indirectly distributes or sells Products, including, but not
22 limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
23 members, and licensees ("Releasees"), from all claims for violations of Proposition 65 up through
24 the Effective Date based on exposure to DEHP from the Products set forth in the Notice.
25 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
26 with respect to exposures to DEHP from the Products as set forth in the Notice.

1 **4.2 Dr. Held’s Individual Release of Claims**

2 Plaintiff also, in his individual capacity only and *not* in his representative capacity, provides
3 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
5 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, against JBB and Releasees, limited to and arising out of alleged or actual
7 exposures to DEHP in the Products manufactured, distributed or sold by Defendant.

8 **4.3 JBB’s Release of Dr. Held**

9 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
11 other representatives, for any and all actions taken or statements made (or those that could have
12 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
13 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
14 respect to the Products.

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
18 after it has been fully executed by all parties.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

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

6 **8. NOTICES**

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

11 To JBB:	To Dr. Held:
12 Peg Carew Toledo, Esq.	Proposition 65 Coordinator
13 Mennemeier, Glassman & Stroud LLP	The Chanler Group
14 980 9 th Street, Suite 1700	2560 Ninth Street
Sacramento, CA 95814	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
19 each of which shall be deemed an original, and all of which, when taken together, shall constitute
20 one and the same document. A facsimile or pdf signature shall be as valid as the original.

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

22 Dr. Held and his attorneys agree to comply with the reporting form requirements referenced
23 in California Health & Safety Code § 25249.7(f).

24 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

25 Dr. Held and JBB agree to mutually employ their best efforts to support the entry of this
26 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
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1 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
2 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
3 Dr. Held shall draft and file, and JBB shall join. If any third party objection to the noticed motion is
4 filed, Dr. Held and JBB shall work together to file a joint reply and appear at any hearing before the
5 Court. This provision is a material component of the Consent Judgment and shall be treated as such
6 in the event of a breach.

7 **12. MODIFICATION**

8 This Consent Judgment may be modified only: (1) by written agreement of the parties and
9 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
10 of any party and entry of a modified Consent Judgment by the Court.

11 **13. AUTHORIZATION**

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

15
16 AGREED TO:

AGREED TO:

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18 Date: 4/11/12

Date: _____

19 By: *Anthony E Held*
20 Plaintiff, Anthony E. Held, Ph.D., P.E.

By: _____
Defendant, Joe Benbasset, Inc.

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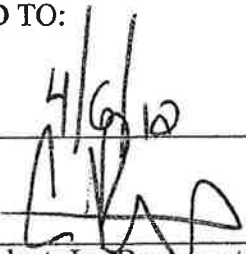
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13 respective parties and have read, understood, and agree to all of the terms and conditions of this
14 Consent Judgment.

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16 AGREED TO:
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18 Date: _____
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20 By: _____
21 Plaintiff, Anthony E. Held, Ph.D., P.E.

AGREED TO:
Date: 4/6/12
By: 
Defendant, Joe Benbasset, Inc.

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