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10 ANTHONY E. HELD, PhD., P.E.

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

14 ANTHONY E. HELD, PhD., P.E.,

15 Plaintiff,

16 v.

17 LIVE NATION ENTERTAINMENT, INC.;
18 HOB ENTERTAINMENT, INC. and DOES
1-150, inclusive,

19 Defendants.

Case No. CGC-11-513334

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, PhD., P.E. (“Held”
4 or “Plaintiff”) and Live Nation Entertainment, Inc. (“Live Nation”) and HOB Entertainment, LLC
5 (“HOB”) (collectively “Defendants”), with Held and Live Nation and HOB collectively referred to as
6 the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Defendants each employ ten or more persons and are persons in the course of doing business
13 for 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 Held alleges that Defendants sold in the state of California handbags (a bag held in the hand
17 or hung from a shoulder strap and used for carrying small personal articles and money) containing
18 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known
19 to the state of California to cause birth defects and other reproductive harm. DEHP is referred to
20 hereinafter as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are handbags sold through HOB
23 containing the Listed Chemical including, without limitation, the *House of Blues Chain Totes*,
24 *HOAMI34*. (hereinafter “Products”).

25 **1.6 Notice of Violation**

26 On or about May 11, 2011, Held served Defendants and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with
28

1 notice that Defendants were allegedly in violation of Proposition 65 for failing to warn their
2 customers and consumers in California that the Products expose users to the Listed Chemical.

3 **1.7 Complaint**

4 On August 15, 2011, Held filed the instant action (“Complaint”) against Defendants for the
5 violations of Health & Safety Code § 25249.6 alleged in the Notice.

6 **1.8 No Admission**

7 Defendants deny the material, factual, and legal allegations contained in the Notice and
8 Complaint and maintain that all of the products that they have sold in California, including the
9 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
10 construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or
11 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
12 admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law, the
13 same being specifically denied by Defendants. This section shall not, however, diminish or otherwise
14 affect the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

15 **1.9 Consent to Jurisdiction**

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

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean November 7,
22 2011.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 As of the Effective Date, Defendants shall only distribute, ship, sell or offer to ship to an
25 unaffiliated third-party for sale in California any Products that contain no more than 1000 parts per
26 million of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing
27 methodologies 3580A and 8270C, or equivalent methods utilized by state or federal agencies for the
28 purpose of determining DEHP content in a solid substance.

1 **3. MONETARY PAYMENTS**

2 **3.1 Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 Defendants shall make a payment of \$2,500 to be apportioned in accordance with Health &
4 Safety Code §§ 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the payment amount
5 earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and
6 the remaining twenty-five percent (25%) of the payment amount earmarked for Held.

7 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

8 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
9 reaching terms on the amount of attorney fees and costs to be reimbursed to them, thereby leaving
10 this fee and cost issue to be resolved after the material terms of the agreement had been settled.
11 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other settlement
12 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
13 compensation due to Held and his counsel under general contract principles and the private attorney
14 general doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in
15 this matter, exclusive of fees that may be incurred on appeal. Under these legal principles,
16 Defendants shall pay \$26,500.00 for fees and costs incurred investigating, litigating and enforcing
17 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
18 obtaining the Court’s approval of this Consent Judgment in the public interest.

19 **3.3 Payment Procedures**

20 **3.3.1 Funds Held in Trust**

21 All payments required by Sections 3.1 and 3.2 shall delivered within fifteen days of
22 the Effective Date to either The Chanler Group or the attorney of record for Defendants, and shall be
23 held in trust pending the Court’s approval of this Consent Judgment.

24 Payments delivered to The Chanler Group shall be made payable, as follows:

- 25 (a) one check made payable to “The Chanler Group in Trust for OEHHA”
26 in the amount of \$1,875;
- 27 (b) a second check made payable to “The Chanler Group in Trust for
28 Anthony Held” in the amount of \$625; and

1 (c) a third check made payable to "The Chanler Group in Trust" in the
2 amount of \$26,500.

3 Payments delivered to defense counsel shall be made payable, as follows:

4 (a) one check made payable to "Gardere, Wynne, Sewell LLP in Trust
5 for OEHHA" in the amount of \$1,875;

6 (b) a second check made payable to "Gardere, Wynne, Sewell LLP in
7 Trust for Anthony Held" in the amount of \$625; and

8 (c) a third check made payable to "Gardere, Wynne, Sewell LLP in Trust
9 for The Chanler Group" in the amount of \$26,500.

10 If Defendants elect to deliver payments to their attorney of record, their attorney of
11 record shall confirm in writing, within five business days of the deposit, that the funds have been
12 deposited into the law firm's trust account.

13 Within two business days of the date of the hearing on which the Court approves the
14 Parties settlement and Consent Judgment, the payments being held in trust by the Defendants'
15 attorney of record, if any, shall be delivered to The Chanler Group in three checks payable, as
16 follows:

17 (a) to "The Chanler Group in Trust for OEHHA" in the amount of \$1,875;

18 (b) to "The Chanler Group in Trust for Anthony Held" in the amount of
19 \$625; and

20 (c) to "The Chanler Group" in the amount of \$26,500.

21 **3.3.2 Issuance of 1099 Forms**

22 After the Consent Judgment has been approved and the settlement funds have been
23 transmitted to plaintiff's counsel, Defendants shall issue three 1099 forms, as follows:

24 (a) one 1099 form to the Office of Environmental Health Hazard Assessment,
25 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,875;

26 (b) a second 1099 form to Anthony Held, whose address and tax identification
27 number shall be provided within five days of the date this Consent Judgment is fully executed by the
28 Parties, in the amount of \$625; and

1 (c) a third 1099 form to The Chanler Group (EIN: 94-3171522) for payment of
2 fees and costs in the amount of \$26,500.

3 **3.3.3 Payment Address**

4 All payments and tax forms required to be transmitted pursuant to Sections 3.1, 3.2,
5 and 3.3.2 shall be delivered to Held's counsel at the following address:

6 The Chanler Group
7 Attn: Proposition 65 Controller
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Full, Final, and Binding Resolution of Proposition 65 Allegations**

13 This Consent Judgment is a full, final and binding resolution between Held, on behalf of
14 himself and the public, and Defendants, of any violation of Proposition 65 that was brought, or
15 could have been brought against Defendants, their parents, subsidiaries, affiliated entities under
16 common ownership, directors, officers, employees, attorneys, and each entity to whom Defendants
17 directly or indirectly distribute or sell the Products, including, without limitation, their downstream
18 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
19 licensees ("Releasees"), based on Defendants' alleged failure to warn about exposures to the Listed
20 Chemical contained in the Products.

21 **4.2 Held's Public Release of Proposition 65 Claims**

22 In further consideration of the promises and agreements herein contained, Held on behalf of
23 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
24 the interest of the general public, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims, including, without limitation, all actions
26 and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs,
27 fines, penalties, losses, or expenses of any nature, including, without limitation, investigation fees,
28 expert fees, and attorneys' fees arising under Proposition 65 (collectively "Claims") against
Defendants and Releasees related to the Products.

1 **4.3 Held’s Individual Release of Claims**

2 Held, in his individual capacity only and *not* in his representative capacity, also provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown,
5 suspected or unsuspected, related to the Products.

6 **4.4 Defendants’ Release of Plaintiff**

7 Defendants on behalf of themselves, their past and current agents, representatives, attorneys,
8 successors, and/or assignees, hereby waive any and all claims against Held and his attorneys and
9 other representatives for any and all actions taken or statements made by Held and his attorneys and
10 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
11 Proposition 65 against them in this matter, or with respect to the Products.

12 **5. SEVERABILITY**

13 If, subsequent to the execution of this Consent Judgment, any of its provisions are held by a
14 court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely
15 affected.

16 **6. GOVERNING LAW**

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

24 **7. NOTICES**

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

1 For Defendants:

2 Sheila Small, Senior Vice-President, Legal Affairs
3 House of Blues Entertainment
4 7060 Hollywood Boulevard
5 Hollywood, CA 90028

6 and

7 James G. Munisteri, Esq.
8 Gardere, Wynne, Sewell LLP
9 1000 Louisiana, Suite 3400
10 Houston, TX 77002

11 For Held:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

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

19 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **9. POST EXECUTION ACTIVITIES**

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

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10. MODIFICATION

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

11. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: **APPROVED**
By Tony at 7:40 pm, Oct 24, 2011

Date: 10/24/11

By: *Anthony E. Held*
Anthony E. Held, PhD., P.E.

By: *Ron Bension*
Ron Bension, Chief Executive Officer
House of Blues Entertainment