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

15 ANTHONY E. HELD, PhD., P.E.,

16 Plaintiff,

17 v.

18 Y.M.I. JEANSWEAR, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. CIV1103673

[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 Held (“Held” or “Plaintiff”)
4 and Y.M.I. Jeanswear, Inc. (“Y.M.I.” or “Defendant”), with Held and Y.M.I. referred to collectively
5 as the “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 Defendant 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 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Defendant sold in the state of California, jeans with belts containing di(2-
16 ethylhexyl)phthalate (“DEHP”) in an amount requiring a clear and reasonable Proposition 65
17 warning. DEHP is listed pursuant to Proposition 65 among those chemicals known to the state of
18 California to cause birth defects or other reproductive harm. DEHP shall be referred to herein as the
19 “Listed Chemical.”

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are belts containing the Listed Chemical sold
22 in California by Y.M.I., including, without limitation, those sold in connection with the *YMI Jeans*
23 *with Belt, Style: P241420-B020, DPRBL N35 (#8 82544 47068 2)*(hereinafter, “Products”).

24 **1.6 Notice of Violation**

25 On or about May 4, 2011, Held served Defendant and various public enforcement agencies
26 with a document entitled “60-Day Notice of Violation” (“Notice”) that informed the recipients that
27 Y.M.I. was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in
28 California that the Products expose users to the Listed Chemical.

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1.7 Complaint

On July 25, 2011, Held, acting in the interest of the general public in California, filed the instant action (“Complaint”) against Y.M.I. for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

1.8 No Admission

Y.M.I. denies the material, factual, and legal allegations contained in the Notice and Complaint and maintains that all of the products 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 Y.M.I. 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 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Y.M.I. This section shall not, however, diminish or otherwise affect Y.M.I.’s 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 Defendant as to the allegations in the Complaint, that venue is proper in Marin County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

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

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, Y.M.I. shall not manufacture, distribute, ship, sell or offer to ship for sale in California any Products that are not “DEHP Free.” For purposes of this Consent Judgment, "DEHP Free" shall mean Products containing no more than 1,000 parts per million (0.1%) of the Listed Chemical when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

1 **3. MONETARY PAYMENTS**

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

3 Defendant shall pay \$3,000 in civil penalties to be allocated according to California Health &
4 Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty payment
5 earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and
6 the remaining 25% 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 fees and costs to be reimbursed to them, thereby leaving the issue
10 to be resolved after the material terms of the agreement had been settled. Defendant then expressed
11 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
12 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
13 counsel under general contract principles and the private attorney general doctrine codified at
14 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees
15 that may be incurred on appeal, if any. Under these legal principles, Y.M.I. shall pay \$25,000 for
16 fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
17 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of
18 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 on or before the
22 Effective Date and held in Trust by counsel to Y.M.I. until such time as the hearing of the motion
23 for judicial approval of the Consent Judgment. Y.M.I.’s attorney of record attorney of record shall
24 confirm in writing within five days of deposit, that the funds have been deposited in the law firm’s
25 trust account. Within two days of the date of the hearing of the motion for judicial approval of the
26 Consent Judgment, payments being held in trust by the attorney of record for Defendant shall be
27 delivered to The Chanler Group in three checks made payable as follows:
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- 1 (a) one check to “The Chanler Group in Trust for OEHHA” in the amount of
2 \$2,250;
3 (b) a second check to “The Chanler Group in Trust for Anthony Held” in the
4 amount of \$750; and
5 (c) a third check to “The Chanler Group” in the amount of \$25,000.

6 **3.3.2 Issuance of 1099 Forms**

7 After the Consent Judgment has been approved and the settlement funds have been
8 transmitted to plaintiff’s counsel, Defendant shall issue three 1099 forms for payments made
9 pursuant to Sections 3.1 and 3.2, as follows:

- 10 (a) one 1099 form to Office of Environmental Health Hazard Assessment, P.O.
11 Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,250;
12 (b) a second 1099 form to Anthony Held, whose address and tax identification
13 number shall be furnished upon request after this Consent Judgment has been fully
14 executed by the Parties, in the amount of \$750; and
15 (c) a third 1099 form to The Chanler Group (EIN: 94-3171522) in the amount of
16 \$25,000.

17 **3.3.3 Payment Address**

18 All payments and tax documentation required by Sections 3.1, 3.2, and 3.3.2 of this
19 Consent Judgment shall be delivered to Held’s counsel at the following address:

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

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

27 This Consent Judgment is a full, final and binding resolution between Held, on behalf of
28 himself and the public, and Defendant, of any violation of Proposition 65 that was brought, or could
have been brought, against Defendant, its parents, subsidiaries, affiliated entities that are under
common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant

1 directly or indirectly distributes or sells the Products, including, without limitation, its downstream
2 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
3 licensees (“Releasees”), based on Y.M.I.’s alleged failure to warn about exposures to the Listed
4 Chemical contained in the Products it sold in California.

5 **4.2 Held’s Public Release of Proposition 65 Claims**

6 In further consideration of the promises and agreements herein contained, Held on behalf of
7 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
8 the interest of the general public, hereby waives all rights to institute or participate in, directly or
9 indirectly, any form of legal action and releases all claims, including, without limitation, all actions
10 and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs,
11 fines, penalties, losses, or expenses of any nature, including, without limitation, investigation fees,
12 expert fees, and attorneys’ fees (exclusive of fees and costs on appeal) arising under Proposition 65
13 (collectively “Claims”) against Defendants and Releasees for unwarned exposures to the Listed
14 Chemical contained in the Products sold by Y.M.I.

15 **4.3 Held’s Individual Release of Claims**

16 Held, in his individual capacity only and *not* in his representative capacity, also provides a
17 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
18 Claims, liabilities, and demands of any nature, character, or kind, whether known or unknown,
19 suspected or unsuspected, arising out of alleged or actual unwarned exposures to the Listed
20 Chemical contained in the Products sold by Y.M.I.

21 Held further acknowledges that he is familiar with California Civil Code § 1542, which
22 provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
24 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
25 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
26 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
27 SETTLEMENT WITH THE DEBTOR.

28 Held, in his individual capacity only and not in his representative capacity, and on behalf of
himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly
waives and relinquishes any and all rights and benefits which he may have under, or which may be

1 conferred on him by the provisions of Civil Code § 1542 of the California as well as under any other
2 state or federal statute or common law principle of similar effect, to the fullest extent that he may
3 lawfully waive such rights or benefits pertaining to the released matters.

4 **4.4 Y.M.I.'s Release of Held**

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

11 Defendant also provides a general release herein which shall be effective as a full and final
12 accord and satisfaction, as a bar to all actions and causes of action, obligations, costs, expenses,
13 attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind,
14 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action.
15 Defendant acknowledges that it is familiar with Civil Code § 1542, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
17 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS
20 SETTLEMENT WITH THE DEBTOR.

19 Defendant expressly waives and relinquishes any and all rights and benefits which it may
20 have under, or which may be conferred on it by, the provisions of Civil Code § 1542 as well as under
21 any other state or federal statute or common law principle of similar effect, to the fullest extent that it
22 may lawfully waive such rights or benefits pertaining to the released matters.

23 **5. SEVERABILITY**

24 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
26 remaining shall not be adversely affected.
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1 **6. GOVERNING LAW**

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

9 **7. NOTICES**

10 Unless specified herein, all correspondence and notices required to be provided pursuant to
11 this Consent Judgment shall be in writing sent by: (i) personal delivery; (ii) first-class, registered or
12 certified mail, return receipt requested; or (iii) overnight courier to the following addresses:

13 For Y.M.I:

14 Nicholas A. Rozansky, Esq.
15 Ezra Brutzkus & Gubner LLP
16 21650 Oxnard Street
 Suite 500
 Woodland Hills, CA 91367

17 For Held:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

23 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or portable
25 document (PDF) signature, each of which shall be deemed an original, and all of which, when taken
26 together, shall constitute one and the same document.

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10. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Held and Defendant and their respective counsel agree to mutually employ their “best efforts” to support the entry of this agreement as a Consent Judgment and obtain judicial approval of the same 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.

11. MODIFICATION

This Consent Judgment may be modified only: (1) by 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.

12. 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:

APPROVED
By Tony at 11:52 am, Oct 24, 2011

Date: _____

Date: _____

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

By: _____
David Vered, President
Y.M.I. JEANSWEAR, INC.

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16 and agree to all of the terms and conditions hereof.

17
18 **AGREED TO:**

AGREED TO:

19
20 Date: _____

Date: 10-24-11

21
22 By: _____
23 ANTHONY HELD, PhD., P.E.

24 By: 
25 David Vered, President
26 Y.M.I. JEANSWEAR, INC.