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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

CSS, INC.; and DOES 1-150, inclusive,

Defendants.

) Case No. RG13704897

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT CSS, INC.**

) Date:

) Time:

) Dept: 16

) Judge: Hon. Lawrence Appel

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, PhD., P.E. and CSS, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
4 P.E. (“Held” or “Plaintiff”) and defendant CSS, Inc. (“CSS” or “Defendant”), with Held and
5 CSS collectively referred to as the “Parties.”

6 **1.2 Anthony E. Held, PhD., P.E.**

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

10 **1.3 CSS, Inc.**

11 CSS 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 §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Held alleges that CSS has manufactured, imported, distributed and/or sold pliers with
16 vinyl/PVC grips with DEHP for use in the State of California without the requisite Proposition
17 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause reproductive harm.

19 **1.5 Notice of Violation.**

20 On September 9, 2013, Held served CSS and various public enforcement agencies with a
21 document entitled “60-Day Notice of Violation” alleging that CSS violated Proposition 65 by
22 failing to warn consumers that pliers with vinyl/PVC grips including, but not limited to, the
23 *Complete Emergency Road Side Kit (Pliers), Item No. AU-03217, UPC, #0 67472 03217 5*
24 exposed users in California to DEHP (“Notice”).

25 **1.6 Complaint.**

26 On November 27, 2013, Held filed a complaint in the Superior Court in and for the
27 County of Alameda against CSS and Does 1 through 150, *Held v. CSS, Inc., et al.*, Case No.

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1 RG13704897 (“Action”), alleging violations of California Health & Safety Code § 25249.6,
2 based on the alleged exposures to DEHP contained in certain pliers with vinyl/PVC grips sold by
3 CSS in the State of California.

4 **1.7 No Admission.**

5 The Parties enter into this Consent Judgment as a full and final settlement of all claims
6 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
7 arising out of the facts or conduct alleged therein. CSS denies the material, factual and legal
8 allegations contained in the Notice and the Complaint, and maintains that all of the products it
9 has manufactured, imported, distributed and/or sold in the State of California, including the
10 Covered Products, have been, and are, in compliance with all laws. By execution of this
11 Consent Judgment and agreeing to comply with its terms, CSS does not admit any facts or
12 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
13 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
14 requirements relating to DEHP in Covered Products, such being specifically denied by CSS.
15 Nothing in this Consent Judgment shall be construed as an admission by CSS of any fact,
16 conclusion of law, issue of law or violation of law, nor shall compliance with this Consent
17 Judgment constitute or be construed as an admission by CSS of any fact, conclusion of law,
18 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
19 impair any right, remedy, argument or defense CSS may have in this or any other future legal
20 proceedings. This Consent Judgment is the product of negotiation and compromise and is
21 accepted by CSS for purposes of settling, compromising, and resolving issues disputed in this
22 action. However, this Section shall not diminish or otherwise affect the obligations,
23 responsibilities and duties of CSS under this Consent Judgment.

24 **1.8 Consent to Jurisdiction.**

25 For purposes of this Consent Judgment only, CSS stipulates that this Court has
26 jurisdiction over CSS as to the allegations contained in the Complaint, that venue is proper in the
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1 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment.

3 **2. DEFINITIONS**

4 **2.1** “Covered Product[s]” means solely and exclusively the *Complete Emergency*
5 *Road Side Kit (Pliers), Item No. AU-03217, UPC, #0 67472 03217 5*, which is manufactured,
6 imported, distributed and/or sold in the State of California by CSS.

7 **2.2** “Effective Date” means June 10, 2014.

8 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
9 supplies a product to CSS.

10 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

11 **3.1 Reformulation Commitment and Standards.**

12 As of the Effective Date, CSS shall only manufacture Covered Products which contain
13 less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA
14 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
15 state agencies for the purpose of determining DEHP content in a solid substance
16 (“Reformulated Covered Products”). By entering into this Consent Judgment, the Parties do
17 not intend to expand or restrict any obligations or responsibilities that may be imposed upon
18 CSS by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to
19 affect any defenses available to CSS under such other laws.

20 **3.2 Vendor Notification Requirement.**

21 To the extent it has not already done so, on or before the Effective Date, CSS shall
22 provide the reformulation standards specified in Section 3.1 for Reformulated Covered Products
23 to any and all of its vendors of Covered Products or their component parts that will be sold or
24 offered for sale to California consumers, and shall instruct each vendor to provide only
25 Reformulated Covered Products or component parts that meet the reformulation standards for
26 Reformulated Covered Products in Section 3.1 above.

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1 **3.3 Sales of Existing Products with Warnings**

2 Nothing in this consent judgment shall preclude CSS from shipping and selling in
3 California its existing inventory of Products. Commencing on April 14, 2014, CSS agrees that
4 any Products that CSS manufactured prior to April 14, 2014, and which CSS directly distributes
5 to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated
6 Products as defined in Section 3.1 will include a warning affixed to the packaging, labeling, or
7 directly on each Product that states:

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

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11 **4. MONETARY PAYMENTS**

12 In settlement of all the claims referred to in this Consent Judgment, CSS shall pay a total
13 of \$40,000.00 in civil penalties in accordance with this Section. Each penalty payment will be
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
15 of the funds remitted to the California Office of Environmental Health Hazard Assessment
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Held, as follows:

17 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §**
18 **25249.7(b).**

19 CSS shall pay an initial civil penalty in the amount of \$10,000.00 on or before June 10,
20 2014. CSS shall issue two separate checks to: (a) OEHHA, in the amount of \$7,500.00; and (b)
21 “The Chanler Group in Trust for Anthony E. Held, PhD., P.E.” in the amount of \$2,500.00. All
22 penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

23 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

24 CSS shall pay a final civil penalty in the amount \$30,000.00 on or before October 15,
25 2014. The final civil penalty shall be waived in its entirety, if, on or before October 1, 2014, an
26 Officer of CSS certifies in writing that it, as of June 10, 2014, has manufactured for sale in
27 California only Reformulated Covered Products and that it will continue to manufacture,
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1 distribute, sell and offer for sale in California only Reformulated Covered Products, or that it has
2 discontinued selling the Covered Products on or before the Effective Date. Such certification
3 must be received by The Chanler Group on or before October 1, 2014. The certification in lieu
4 of paying the final civil penalty provided by this Section is a material term, and time is of the
5 essence. Unless waived, CSS shall issue two separate checks for its final civil penalty payment
6 to: (a) OEHHA, in the amount of \$22,500.00; and (b) "The Chanler Group in Trust for Anthony
7 E. Held, PhD., P.E." in the amount of \$7,500.00.

8 **4.3 Reimbursement of Plaintiff's Fees and Costs.**

9 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee
11 issue to be resolved after the material terms of the agreement had been settled. CSS then
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
13 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
14 to Held and his counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed
16 (and to be performed) in this matter, except fees that may be incurred in connection with a third-
17 party, including the Office of the Attorney General, appeal (if any). Under these legal principles,
18 CSS shall pay the amount of \$40,000.00 to reimburse Plaintiff's fees and costs incurred
19 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
20 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
21 Judgment in the public interest. This payment shall be made payable on or before the Effective
22 Date to The Chanler Group and shall be delivered to the address in Section 4.4.1(a) below.

23 **4.4 Payment Procedures.**

24 **4.4.1 Funds Held In Trust**

- 25 (a) All payments owed to Held, pursuant to Sections 4.1 through
26 4.2, shall be delivered to the following payment address:

27 The Chanler Group
28 Attn: Proposition 65 Controller

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2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of April 14, 2014, Plaintiff shall meet and confer with CSS about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid and held in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon CSS’s written request.

5. CLAIMS COVERED AND RELEASED

5.1 Held, acting on behalf of himself and in the public interest, hereby releases CSS, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders (“Defendant Releasees”), and any of its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, and any other person or entity to whom they directly or indirectly distribute or sell

1 Covered Products (“Downstream Defendant Releasees”), from any alleged or actual violation of
2 Proposition 65 that has been asserted by Held in the public interest in his Notice and Complaint
3 regarding the alleged failure to warn about exposure to DEHP in Covered Products sold or
4 distributed by CSS prior to the Effective Date. CSS’s compliance with this Consent Judgment
5 shall constitute compliance with Proposition 65 with respect to DEHP in Covered Products.

6 **5.2** Held on behalf of himself, his past and current agents, representatives, attorneys,
7 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
8 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
9 including, without limitation, all actions, and causes of action, in law or in equity, suits,
10 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
11 but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever,
12 fixed or contingent (collectively “Claims”), against CSS, Defendant Releasees, and Downstream
13 Defendant Releasees arising from any violation of Proposition 65 regarding the failure to warn
14 about exposure to DEHP in Covered Products sold or distributed prior to the Effective Date.

15 **5.3** Held also, in his individual capacity only and *not* in his representative capacity,
16 provides a general release herein which shall be effective as a full and final accord and
17 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
18 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known
19 or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed
20 under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date.
21 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
22 provides as follows:

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

26 Held, in his individual capacity only and *not* in his representative capacity, expressly waives and
27 relinquishes any and all rights and benefits which he may have under, or which may be conferred
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1 on him by the provisions of Section 1542 of the California Civil Code 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. In furtherance of such
4 intention, the release hereby given shall be and remain in effect as a full and complete release
5 notwithstanding the discovery or existence of any such additional or different claims or facts
6 arising out of the released matters.

7 The Parties further understand and agree that this release shall not extend upstream to
8 any entities, other than CSS, that manufactured the Covered Products or any component parts
9 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
10 thereof to CSS.

11 **5.4** CSS waives any and all Claims against Held, his attorneys, and other
12 representatives for any and all actions taken or statements made (or those that could have been
13 taken or made) by Held and his attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
15 matter, and/or with respect to the Covered Products.

16 **5.5** CSS also provides a general release herein which shall be effective as a full and
17 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
18 attorneys' fees, damages, losses, claims, liabilities and demands of CSS of any nature, character
19 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
20 Action. CSS acknowledges that it is familiar with Section 1542 of the California Civil Code,
21 which provides as follows:

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

25 CSS expressly waives and relinquishes any and all rights and benefits which it may have under,
26 or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code,
27 as well as under any other state or federal statute or common law principle of similar effect, to
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1 the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
2 matters. In furtherance of such intention, the release hereby given shall be and remain in effect
3 as a full and complete release notwithstanding the discovery or existence of any such additional
4 or different claims or facts arising out of the released matters.

5 **6. COURT APPROVAL**

6 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
7 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
8 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

9 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
10 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
11 which Held shall file and which CSS shall support as reasonably necessary.

12 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
13 and any and all prior agreements between the Parties merged herein shall terminate and become
14 null and void, and the action shall revert to the status that existed prior to the execution date of
15 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
16 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
17 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
18 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
19 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

20 **7. GOVERNING LAW**

21 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
22 California, and shall apply only to Covered Products offered for sale in the State of California.
23 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
24 law generally, or as to the Covered Products, then CSS may provide written notice to Held of
25 any asserted change in the law, and shall have no further obligations pursuant to this Consent
26 Judgment with respect to, and to the extent that, the Covered Products are so affected.

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1 **7.2** The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
5 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
6 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
7 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
8 resolved against the drafting Party should not be employed in the interpretation of this Consent
9 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

10 **8. NOTICES**

11 **8.1** Unless specified herein, all correspondence and notices required to be provided
12 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
13 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
14 Party by the other Party at the following addresses:

15 To CSS:

16 Livia Borak, Esq.
17 Coast Law Group LLP
18 1140 South Coast Highway 101
19 Encinitas, California 92024

20 To Held:

21 Proposition 65 Coordinator
22 The Chanler Group
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

26 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
27 of address to which all notices and other communications shall be sent.

28 **9. MODIFICATION**

9.1 Modification. This Consent Judgment may be modified by written agreement of
the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
Party and entry of a modified Consent Judgment by the court.

1 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
2 regulation is adopted that addresses the DEHP content of Covered Products sold in California
3 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
4 in Section 3.1 of this Consent Judgment for good cause shown.

5 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
7 Party prior to filing a motion to modify the Consent Judgment.

8 **10. ENTIRE AGREEMENT**

9 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
12 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
13 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
14 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
15 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
16 waiver unless set forth in writing between the Parties.

17 **11. RETENTION OF JURISDICTION**

18 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
20 provision thereof, under C.C.P. §664.6.

21 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

22 **12.1** This Consent Judgment may be executed in counterparts and by facsimile or
23 portable document format (pdf), each of which shall be deemed an original, and all of which,
24 when taken together, shall constitute one and the same document.

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13. AUTHORIZATION

13.1 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 of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: May, 14, 2014

Date: _____

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

By: _____
Defendant CSS, Inc.

1 **13. AUTHORIZATION**

2 **13.1** The undersigned are authorized to execute this Consent Judgment on behalf of
3 their respective Parties and have read, understood, and agree to all of the terms and conditions of
4 this Consent Judgment.

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6 **AGREED TO:** **AGREED TO:**
7 Date: _____ Date: 6/2/14
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9 By: _____ By: [Signature] pro CSS Inc
10 Plaintiff Anthony E. Held, PhD., P.E. Defendant CSS, Inc.
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