

1 Christopher Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 ANTHONY E. HELD PH.D., P.E.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD PH.D., P.E.,

14 Plaintiff,

15 v.

16 BEST BUY CO., INC.; HOT
17 PROPERTIES! MERCHANDISING, INC.;

18 and DOES 1-150, inclusive,

19 Defendants.

Case No. 114CV273788

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held (“Held”) and defendant Hot Properties! Merchandising, Inc. (“Hot Properties”), with Held and Hot Properties each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Hot Properties employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Hot Properties manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC I.D. cards and charms containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warning that Held alleges is required by Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC I.D. cards and charms containing DEHP, including, but not limited to, the *The Simpsons Lanyard with I.D. Card and Charm, UPC #6 61304 97642 4* (collectively, “Products”).

23 **1.6 Notice of Violation**

24 On June 20, 2014, Held served Hot Properties and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Hot Properties violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On November 25, 2014, Held commenced the instant action, naming Hot Properties as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

5 Hot Properties denies the material, factual, and legal allegations contained in the Notice and
6 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
7 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
8 Judgment shall be construed as an admission by Hot Properties of any fact, finding, conclusion of
9 law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
10 be construed as an admission by Hot Properties of any fact, finding, conclusion of law, issue of law,
11 or violation of law. This Section shall not, however, diminish or otherwise affect Hot Properties’s
12 obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Hot Properties as to the allegations contained in the Complaint, that venue is
16 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
18 section 664.6.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
21 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

22 **2. INJUNCTIVE SETTLEMENT TERMS**

23 Commencing on October 15, 2015, and continuing thereafter, Hot Properties shall only
24 manufacture, import, distribute, purchase for sale, sell or distribute for sale in California,
25 Reformulated Products. For purposes of this Consent Judgment, “Reformulated Products” are
26 defined as Products with a maximum DEHP concentration 0.1 percent (1,000 parts per million)
27 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
28

1 and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of
2 determining DEHP content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, Hot Properties shall pay \$4,000 in civil penalties in
7 accordance with this Section. This penalty payment will be allocated in accordance with California
8 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
9 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
10 penalty remitted to Held. Hot Properties shall provide its payment, within fifteen days of the date
11 that this Consent Judgment is fully executed by the Parties, in a single check made payable to
12 “Anthony E. Held, Client Trust Account.” Held’s counsel shall be responsible for remitting
13 OEHHA’s portion of the penalty payment to OEHHA.

14 **3.2 Reimbursement of Attorneys’ Fees and Costs**

15 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
17 to be resolved after the material terms of the agreement had been settled. Shortly after the other
18 settlement terms had been finalized, Hot Properties expressed a desire to resolve Held’s fees and
19 costs. The Parties then negotiated a resolution of the compensation due to Held and his counsel
20 under general contract principles and the private attorney general doctrine codified at California
21 Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this
22 agreement and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any,
23 Hot Properties shall reimburse Held and his counsel \$23,100 to be delivered in three (3)
24 installments according to the following schedule: (1) \$17,500 due on or before November 1, 2015;
25 (2) \$2,800 due on or before December 1, 2015; and (3) \$2,800 on or before January 1, 2016. Each
26 payment shall in the form of a check payable to “The Chanler Group.” The reimbursement shall
27 cover all fees and costs incurred by Held investigating, bringing this matter to Hot Properties’
28 attention, litigating, and negotiating a settlement of the matter in the public interest.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.3 Payments Held In Trust

Any payment that becomes due under this Consent Judgment prior to the Court’s approval of the Parties’ settlement shall be tendered on the date it is due, and held in trust by Hot Properties’ counsel until, and disbursed to Held within five days after, the Effective Date. Hot Properties’ counsel shall confirm receipt of each settlement payment received in writing to Held’s counsel. Any payment that becomes due after the Effective Date, shall be delivered directly to Held’s counsel at the address in Section 3.4.

3.4 Payment Address

All payments required by this Consent Judgment shall be delivered to:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Held’s Release of Proposition 65 Claims

Held, acting on his own behalf and in the public interest, releases Hot Properties and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom Hot Properties directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited to, Best Buy, Inc. and its affiliates), franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by Hot Properties prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Hot Properties with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Hot Properties after the Effective Date.

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

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

9 **4.3 Hot Properties’ Release of Held**

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

16 **5. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
19 after it has been fully executed by all Parties. Held and Hot Properties agree to support the entry of
20 this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely
21 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
22 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
23 motion Held shall draft and file and Hot Properties shall support, appearing at the hearing if so
24 requested. If any third-party objection to the motion is filed, Held and Hot Properties agree to work
25 together to file a reply and appear at any hearing. This provision is a material component of the
26 Consent Judgment and shall be treated as such in the event of a breach.

27
28

1 **6. SEVERABILITY**

2 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,
3 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
4 remaining provisions shall not be adversely affected.

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

18 To Hot Properties:	To Held:
19 James Tsukahira, President	Attn: Proposition 65 Coordinator
20 Hot Properties! Merchandising, Inc.	The Chanler Group
21 3919 East Guasti Road, Suite C	2560 Ninth Street
22 Ontario, CA 91761	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

22 with a copy to:
23 William F. Tarantino, Esq.
24 Morrison & Foerster LLP
25 425 Market Street
26 San Francisco, CA 94105-2406

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

1 **9. COUNTERPARTS, FACSIMILE AND PDF 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 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 Held and his counsel agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code section 25249.7(f).

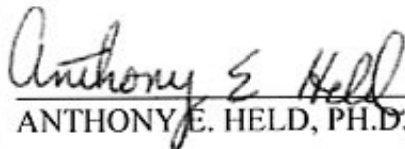
8 **11. MODIFICATION**

9 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
10 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
11 any party and the entry of a modified Consent Judgment by the Court thereon.

12 **12. AUTHORIZATION**

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


16 **AGREED TO:**

17 
18 ANTHONY E. HELD, PH.D., P.E.

19 Dated: 8/28/15

16 **AGREED TO:**

17 HOT PROPERTIES! MERCHANDISING, INC.

18 
19 (Print Name)
20 Its: Jim Bukahira
21 (Title)

22 Dated: 8/9/15
23
24
25
26
27
28