

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

FILED

JUL 23 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: A. Garcia, Deputy

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

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

Plaintiff,

v.

SUNRISE BRANDS, LLC; *et al.*,

Defendants.

Case No. CIV1103967

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: July 17, 2012
Time: 9:00 a.m.
Dept.: L
Judge: Hon. M. Lynn Duryee

1 Plaintiff, Anthony E. Held, Ph.D., P.E., and defendant, Sunrise Brands, LLC, having
2 agreed through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's issuance of
4 an Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is entered in
7 accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation
8 of the parties the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.

10
11 **IT IS SO ORDERED.**

JUL 23 2012

LYNN DURYEE

Dated: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

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

14 ANTHONY E. HELD, Ph.D., P.E.,
15 Plaintiff,
16 v.
17 SUNRISE BRANDS, LLC; *et al.*,
18 Defendants.

Case No. CIV1103967

**[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 plaintiff, Anthony E. Held, PhD.,
4 P.E. ("Held") and Sunrise Brands, LLC ("Sunrise"), with Held and Sunrise collectively referred to
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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Sunrise has manufactured, imported, sold or distributed for sale in
16 California, belts containing di(2-ethylhexyl)phthalate ("DEHP") 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 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are belts containing DEHP,
21 including, without limitation, those offered in connection with the *American Rag CIE Shorts with*
22 *Belt, Style TOD2ORN (#8 83355 32265 8)*, manufactured, sold, or distributed for sale in California
23 by Sunrise or its Affiliates (collectively "Products"). As used herein, the term "Affiliate" shall
24 mean and include any parent or subsidiary of Sunrise, and any other person or entity that directly or
25 indirectly controls, is controlled by or is under common control with Sunrise or its parents or
26 subsidiaries.

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1.6 Notice of Violation

On May 11, 2011, Held served Sunrise and various public enforcement agencies with a 60-Day Notice of Violation (“Notice”), a document that informed the recipients of Held’s allegation that Sunrise was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP.

1.7 Complaint

On August 9, 2011, Held filed the instant action (“Complaint”) against Sunrise for the violations of Health & Safety Code § 25249.6 alleged in the Notice.

1.8 No Admission

Sunrise denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that it and its Affiliates have 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 Sunrise 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 by Sunrise of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Sunrise. This Section shall not, however, diminish or otherwise affect Sunrise’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 Sunrise as to the allegations contained in the Complaint, that venue is proper in Marin County, and that this 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 June 1, 2012.

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1 **2. INJUNCTIVE RELIEF**

2 Commencing on October 1, 2012 and continuing thereafter, Sunrise only sell or distribute
3 for sale in California, Products that contain a maximum of 1,000 parts per million DEHP content in
4 any accessible component (i.e., any component that can be touched or handled during reasonably
5 foreseeable use) analyzed pursuant to Environmental Protection Agency (“EPA”) testing
6 methodologies 3580A and 8270C or equivalent methodologies used by federal or state agencies for
7 the purpose of determining DEHP content in a solid substance.

8 **3. MONETARY PAYMENTS**

9 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

10 Sunrise shall pay a civil penalty of \$5,000. The penalty amount reflects a credit of \$5,000
11 agreed to by Held in response to Sunrise’s commitment to Proposition 65 compliance, including
12 offering Products that comply with the DEHP content requirements of section 2.

13 The penalty payment shall be allocated according to Health & Safety Code § 25249.12 (c)(1)
14 and (d), with seventy-five percent (75%) of the penalty amount earmarked for the California Office
15 of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent
16 (25%) of the penalty amount earmarked for Held.

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

18 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
20 issue to be resolved after the material terms of the agreement had been settled. Sunrise 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 Held
23 and his counsel under general contract principles and the private attorney general doctrine codified
24 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
25 fees that may be incurred on appeal. Under these legal principles, Sunrise shall pay \$34,000 for fees
26 and costs incurred investigating, litigating, and enforcing this matter, including the fees and costs
27 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of this
28 Consent Judgment in the public interest.

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3.3 Payment Procedures

3.3.1 Funds Held in Trust

The Parties acknowledge that Held’s counsel gave Sunrise the option of depositing the funds into its attorney’s trust account, but that Sunrise elected to have The Chanler Group hold the settlement funds in its trust account until such time as the hearing of the motion for judicial approval of the settlement contemplated by section 5. Settlement shall be in the form of three checks for the following amounts, made payable as follows:

- (a) one check to “The Chanler Group in Trust for OEHHA” in the amount of \$3,750;
- (b) a second check to “The Chanler Group in Trust for Anthony Held” in the amount of \$1,250; and
- (c) a third check to “The Chanler Group in Trust” in the amount of \$34,000.

3.3.2 Issuance of 1099 Forms

After payment has been delivered and the Consent Judgment has been approved, Sunrise shall issue three separate 1099 forms as follows:

- (a) one 1099 form to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalty payment of \$3,750;
- (b) a second 1099 form to Anthony Held, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, for the civil penalty payment of \$1,250; and
- (c) a third 1099 form to The Chanler Group (EIN: 94-3171522) for the reimbursement of Held’s fees and costs in the amount of \$34,000.

3.3.3 Payment Timing; Location

All payments required by this Consent Judgment shall be delivered to Held’s counsel on or before the Effective Date the following address:

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1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Held's Public Release of Proposition 65 Claims**

8 Held acting on his own behalf and in the public interest releases Sunrise, its Affiliates
9 (including, but not limited to, Private Brands, LLC), and their respective directors, officers,
10 employees, attorneys, licensors, licensees, and each entity to whom they directly or indirectly
11 distributed or sold the Products, including, without limitation, their downstream distributors,
12 wholesalers, dealers, customers, owners, purchasers, users, auctioneers, and retailers (including, but
13 not limited to, Macy's Merchandising Group, Inc., Macy's, Inc., and Macy's West Stores, Inc.) from
14 all claims for violations of Proposition 65 up through the Effective Date based on exposures to DEHP
15 from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
16 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as
17 set forth in the Notice.

18 **4.2 Held's Individual Release of Claims**

19 Held, in his individual capacity only and *not* in his representative capacity, also provides a
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
22 liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or
23 unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured,
24 distributed or sold by Sunrise or its Affiliates. Held acknowledges that he is familiar with Section
25 1542 of the California Civil Code, which provides as follows:

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

1 Held expressly waives and relinquishes any and all rights and benefits which he may have
2 under, or which may be conferred on him by the provisions of Section 1542 of the California Civil
3 Code as well as under any other state or federal statute or common law principle of similar effect, to
4 the fullest extent that he may lawfully waive such rights or benefits pertaining to claims for violations
5 of Proposition 65 based on exposures to DEHP from the Products.

6 **4.3 Sunrise's Release of Held**

7 Sunrise on behalf of itself, its past and current agents, representatives, attorneys, successors,
8 and/or assignees, hereby waives any and all claims against Held, his attorneys and other
9 representatives, for any and all actions taken or statements made (or those that could have been taken
10 or made) by Held and his attorneys and other representatives, whether in the course of investigating
11 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
12 Products. Sunrise acknowledges that it is familiar with Section 1542 of the California Civil Code,
13 which provides as follows:

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

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

22 **5. COURT APPROVAL**

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

26 **6. SEVERABILITY**

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

1 **7. 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.

4 **8. NOTICES**

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

9 For Sunrise:

10 Chief Financial Officer
11 Sunrise Brands, LLC
12 801 South Figueroa St., Suite 2500
13 Los Angeles, CA 90017

14 with a copy to:

15 Christian Trunnell, Esq.
16 317 Broadway St.
17 Venice, CA 90291

18 For Held:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

26 **9. COUNTERPARTS: FACSIMILE SIGNATURES**

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

29 **10. POST EXECUTION ACTIVITIES**

30 Held agrees to comply with the reporting form requirements referenced in Health & Safety
Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to California Health &

1 Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this Consent
2 Judgment. In furtherance of obtaining such approval, Held and Sunrise and their respective counsel
3 agree to mutually employ their best efforts to support the entry of this agreement as a Consent
4 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For
5 purposes of this section, "best efforts" shall include, at a minimum, cooperating on the drafting and
6 filing of any papers in support of the required motion for judicial approval.

7 **11. 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 of
10 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
11 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
12 in advance of its consideration by the Court.

13 **12. AUTHORIZATION**

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

16 **AGREED TO:**

AGREED TO:

17
18
19 By: Anthony E. Held
20 ANTHONY E. HELD, Ph.D., P.E.

By: _____
Peter Akaragian, Chief Financial Officer
SUNRISE BRANDS, LLC

21 **APPROVED**
22 By Anthony Held at 3:38 pm, May 15, 2012
23 Date: _____

24 Date: _____

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6 filing of any papers in support of the required motion for judicial approval.

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16 **AGREED TO:**

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19 By: _____
20 ANTHONY E. HELD, PhD., P.E.

21 Date: _____
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AGREED TO:

By: _____
Peter Akaragian, Chief Financial Officer
SUNRISE BRANDS, LLC

Date: 5/13/12 _____