

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

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

Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.,

ENDORSED
FILED
San Francisco County Superior Court

JUN 08 2012

CLERK OF THE COURT
BY: ERICKA LARNAUTI
Deputy Clerk

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

ANTHONY E. HELD, PhD., P.E.,
Plaintiff,
v.
IDEA NUOVA INC.; *et al.*,
Defendants.

Case No. CGC-11-514063

**[PROPOSED] JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: April 19, 2012
Time: 9:30 a.m.
Dept. 302
Judge: Hon. Harold E. Kahn

1 Plaintiff, Anthony Held, and defendant, Idea Nuova Inc., having agreed through
2 their respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a Consent Judgment, and following this Court's issuance of an
4 Order approving the parties' Proposition 65 settlement and Consent Judgment,

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

10 **IT IS SO ORDERED.**

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 6-8-12

HAROLD KAHN

JUDGE OF THE SUPERIOR COURT

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 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
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 IDEA NUOVA INC.; *et al.*,

18 Defendants.

Case No. CGC-11-514063

[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 Held (“Held” or
4 “Plaintiff”), and defendant, Idea Nuova Inc. (“Idea Nuova” or “Defendant”) with Held and Idea
5 Nuova referred to individually as a “Party”, and collectively 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 Idea Nuova 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 Idea Nuova sold tote bags containing the phthalate chemical di(2-
16 ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable exposure warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 state of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are tote bags containing DEHP that are
21 manufactured, distributed, and/or sold by in California by Idea Nuova, including, but not limited to,
22 the *Cannon Ultrasuede Throw’N Tote With Sherpa, #07101014580 (#7 84857 42968 8)* (“Products”).

23 **1.6 Notice of Violation**

24 On or about May 11, 2011, Held served Idea Nuova and various public enforcement agencies
25 with a “60-Day Notice of Violation” (“Notice”), a document that informed recipients that Idea Nuova
26 was allegedly in violation of Proposition 65 for failing to warn its customers and consumers in
27 California that the Products expose users to DEHP.

28

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

1.7 Complaint

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

1.8 No Admission

Idea Nuova denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains that all of the products that 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 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 Idea Nuova. This section shall not, however, diminish or otherwise affect Idea Nuova’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 Idea Nuova as to the allegations made in the Complaint, that venue is proper in the County of San Francisco, 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 December 16, 2011.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, Idea Nuova shall only ship, sell, or distribute for sale in California Products that comply with the “DEHP Standard.” For purposes of this Consent Judgment, Products that comply with the DEHP Standard contain a maximum concentration of 1000 parts per million (0.1%) DEHP in any component when analyzed pursuant to U.S. 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
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. MONETARY PAYMENTS

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

Idea Nuova shall pay \$4,500 in civil penalties to be allocated according to Health & Safety Code § 25249.12 (c)(1) & (d), with seventy-five percent (75%) of the penalty payment earmarked for the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty payment earmarked for Held. The penalty amount reflects a penalty credit of \$5,500 agreed to by Held in response to Idea Nuova’s commitment to comply with the DEHP Standard established by section 2.

3.2 Reimbursement of Plaintiff’s Fees and Costs

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after all other settlement terms had been finalized, Idea Nuova expressed a desire to resolve the remaining issue of Plaintiff’s fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed in this matter exclusive of fees and costs that may be incurred on appeal, if any. Under these legal principles, Idea Nuova shall pay \$32,000 for fees and costs incurred investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be incurred) negotiating a settlement, drafting the motion for judicial approval, and moving the Court for, and obtaining its approval of, this Consent Judgment in the public interest.

3.3 Payment Procedures

3.3.1 Payments Held in Trust

All payments made under this Consent Judgment shall be held in trust until such time as the Court approves this settlement. The Parties acknowledge that Held’s counsel gave Idea Nuova the option of depositing the funds into its attorney’s trust account, but that Idea Nuova elected to have The Chanler Group hold the settlement funds in its own trust account.

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

3.3.1 Payment Schedule

All settlement funds required by sections 3.1 and 3.2 shall be delivered to Held's counsel according to the following schedule:

(a) On or before December 30, 2011, Idea Nuova shall deliver three checks made payable as follows:

- (1) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$3,375;
- (2) a second check to "The Chanler Group in Trust for Anthony Held" in the amount of \$1,125; and
- (3) a third check to "The Chanler Group in Trust" in the amount of \$8,000.

(b) On or before January 27, 2012, Idea Nuova shall deliver a fourth check made payable to "The Chanler Group in Trust" in the amount of \$12,000.

(c) On or before February 24, 2012, Idea Nuova shall deliver a fifth check made payable to "The Chanler Group in Trust" in the amount of \$12,000.

3.3.3 Issuance of 1099 Forms

For payments made pursuant to sections 3.1 and 3.2, Idea Nuova shall provide Held's counsel with four 1099 forms completed 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 civil penalties paid to OEHHA in the amount of \$3,375;

(b) a second 1099 form to "Anthony Held" for civil penalties paid in the amount of \$1,125. Held's address and tax identification number shall be furnished upon request after this Consent Judgment is fully executed by the Parties;

(c) a third 1099 form to "The Chanler Group" (EIN: 94-3171522) for the \$8,000 of Held's attorneys' fees and costs reimbursed in 2011; and

(d) a fourth 1099 form to "The Chanler Group" (EIN: 94-3171522) for the \$24,000 of Held's attorneys' fees and costs reimbursed in 2012.

1 **3.3.4 Payment Address**

2 All payments and tax forms required by this Consent Judgment shall be delivered to
3 Held's counsel at the following address:

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

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

9 This Consent Judgment is a full, final, and binding resolution between Held, on behalf of
10 himself and the public, and Idea Nuova, of any violation of Proposition 65 that was or could have
11 been asserted against Idea Nuova, its parents, subsidiaries, affiliated entities under common
12 ownership, directors, officers, employees, attorneys, and each downstream entity to whom Idea
13 Nuova directly or indirectly markets, distributes, or sells the Products, including, without limitation,
14 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
15 licensors, and licensees ("Releasees") arising out of unwarned exposures to DEHP contained in the
16 Products sold by Idea Nuova.

17 **4.2 Held's Public Release of Proposition 65 Claims**

18 This Consent Judgment is a full, final, and binding resolution between Held, on behalf of
19 himself and the public, and Idea Nuova, of any violation of Proposition 65 that was or could have
20 been asserted by Held against Idea Nuova, its parents, subsidiaries, affiliated entities under common
21 ownership, directors, officers, employees, attorneys, and each downstream entity to whom Idea
22 Nuova directly or indirectly markets, distributes or sells the Products, including, without limitation,
23 its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
24 licensors, and licensees ("Releasees"), based on unwarned exposures to DEHP contained in the
25 Products sold by Idea Nuova.

26 **4.3 Held's Individual Release of Idea Nuova**

27 Held, in his individual capacity only and *not* in his representative capacity, also provides a
28 release to Idea Nuova and the Releasees which shall be effective as a full and final accord and

1 satisfaction, as a bar to all Claims, liabilities, and demands of any nature, character or kind, whether
2 known or unknown, suspected or unsuspected, arising out of exposures to DEHP contained in the
3 Products sold by Idea Nuova.

4 **4.4 Idea Nuova's Release of Held**

5 Idea Nuova 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, seeking to enforce Proposition 65 against it in this matter, or with respect to
10 the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
14 has been fully executed by the Parties. In which event, any monies that have been provided to Held
15 or his counsel pursuant to this Consent Judgment shall be refunded within fifteen days after receiving
16 written notice from Idea Nuova that the one-year period has expired and the Consent Judgment has
17 not been approved and entered by the Court.

18 **6. SEVERABILITY**

19 If, subsequent to the execution of this Consent Judgment, any provision is held by a court to
20 be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

21 **7. GOVERNING LAW**

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

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and sent by: (i) personally delivery; (ii) first-class,
4 registered or certified mail, return receipt requested; or (ii) a recognized overnight courier by one
5 Party to the other Party at following addresses:

6 For Idea Nuova:

7 Margaux Levy, Esq., General Counsel
8 Idea Nuova, Inc.
9 302 5th Avenue
10 New York, NY 10001

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 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **10. 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 Idea Nuova 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 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.

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

11. **MODIFICATION**

This Consent Judgment may be modified only by: (i) the written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) 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 contained herein.

AGREED TO:

AGREED TO:

APPROVED
By Anthony Held at 1:53 pm, Dec 08, 2011

Date:

Date:

12-20-11

By:

Anthony E. Held
ANTHONY E. HELD, Ph.D., P.E.

By:

[Signature]
~~Nathan Aocad, President~~ Isaac Ader
IDEA NUOVA, INC. C.O.O.