

FILED

MAY - 3 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

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

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

16 Plaintiff,

17 v.

18 STILA STYLES, LLC, *et al.*,

19 Defendants.

Case No. CIV-1404364

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT AS TO
DEFENDANT STILA STYLES, LLC

Date: May 3, 2016

Time: 1:30 p.m.

Dept: L

Judge: Hon. Geoffrey M. Howard

1 In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E., and defendant Stila
2 Styles, LLC, having agreed through their respective counsel that Judgment be entered pursuant to the
3 terms of their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent
4 Judgment”), and following this Court’s issuance of an Order approving this Proposition 65 settlement
5 and Consent Judgment on May 3, 2016.

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

11
12 **IT IS SO ORDERED.**

13
14 Dated: MAY - 3 2016

13 **GEOFFREY M. HOWARD**
14 _____
15 JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
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12 ANTHONY E. HELD, PH.D., P.E.,
13 Plaintiff,
14 v.
15 STILA STYLES, LLC; *et al.*,
16 Defendants.

) Case No. CIV-1404364
)
) **[PROPOSED] CONSENT JUDGMENT**
)
)
)
)
) Action Filed: November 18, 2014

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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Stila Styles, LLC**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held”) and defendant Stila Styles, LLC (“Stila”) with Held and Stila collectively referred to
5 as the “parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

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

10 **1.3 Stila Styles, LLC**

11 Stila 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 § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Stila manufactured, imported, distributed and/or sold in the State of
16 California color correcting sticks containing sunscreen, which contain benzophenone.
17 Benzophenone is listed pursuant to Proposition 65 as a chemical known to the State of California to
18 cause cancer.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as color correcting
21 sticks containing sunscreen, which allegedly contain benzophenone including, but not limited to,
22 *Stila CC Color Correcting Stick Broad-Spectrum SPF 20, Warm 06, S899-06-1790, UPC# 0 94800*
23 34467 9, which are manufactured, imported, distributed, sold and/or offered for sale by Stila in the
24 State of California, hereinafter the “Products.”

25 **1.6 Notice of Violation**

26 On July 11, 2014, Held served Stila Styles, LLC, others and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with
28 notice that Stila was in violation of California Health & Safety Code § 25249.6 for failing to warn

1 consumers that their color correcting sticks containing sunscreen exposed users in California to
2 benzophenone (“Notice”). To the best of the parties’ knowledge, no public enforcer has
3 commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On November 18, 2014, Held filed a complaint in the Superior Court in and for the County
6 of Marin against Stila Styles, LLC, et al., *Held v. Stila Styles, LLC, et al.*, Case No. CIV 1404364
7 (the “Complaint”), alleging violations of California Health & Safety Code § 25249.6, based on
8 exposures to benzophenone contained in certain color correcting sticks containing sunscreen sold by
9 Stila Styles, LLC et al. in the State of California.

10 **1.8 No Admission**

11 Stila denies the material, factual and legal allegations contained in Held’s Notice and the
12 Complaint and maintains that all products that it has sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all
14 applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Stila of
15 any fact, finding, issue of law or violation of law, nor shall compliance with this Consent Judgment
16 constitute or be construed as an admission by Stila of any fact, finding, conclusion, issue of law or
17 violation of law. However, this section shall not diminish or otherwise affect Stila’s obligations,
18 responsibilities and duties under this Consent Judgment.

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Consent Judgment only, the parties stipulate that this Court has
21 jurisdiction over Stila as to the allegations contained in the Complaint, that venue is proper in the
22 County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
26 Court approves this Consent Judgment.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing benzophenone in
4 concentrations less than or equal to 12.5 parts per million (“ppm”) when they are analyzed pursuant
5 to a scientifically appropriate application of U.S. Environmental Protection Agency testing
6 methodologies 3580A and 8270C or any other scientifically appropriate methodology for
7 determining the benzophenone content in a substance of the form of the Products herein. Stila
8 represents that it ceased selling the Products in California as of October 19, 2015. In the event that
9 Stila distributes for sale or sells the Products in California in the future, it shall only distribute
10 and/or sell Reformulated Products.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Payment into California Safe Drinking Water and Toxic Enforcement Fund**
13 **Pursuant to Health & Safety Code §25249.12(c).**

14 In settlement of all the claims referred to in this Consent Judgment, Stila shall pay \$5,000, of
15 which 75% (\$3,750) shall be remitted to the State of California’s Office of Environmental Health
16 Hazard Assessment (“OEHHA”) for deposit into the Safe Drinking Water and Toxic Enforcement
17 Fund pursuant to California Health & Safety Code Section 25249.12(c), and of which the remaining
18 25% (\$1,250) shall be paid to Held. Stila shall issue a check to: “Anthony E. Held, Client Trust
19 Account” in the amount of \$5,000. Of this amount, the Chanler Group shall remit \$3,750 to
20 OEHHA, per the terms above. All penalty payments shall be delivered to the address listed in
21 Section 3.3 below.

22 **3.2 Attorney Fees and Costs**

23 The Parties reached an accord on the compensation due to Held and his counsel under
24 general contract principles and the private attorney general doctrine codified at Code of Civil
25 Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Stila
26 shall pay \$18,000 for all fees and costs through execution of this Consent Judgment, including fees
27 and costs incurred investigating, bringing this matter to the attention of Stila’s management, and
28 negotiation of this settlement.

1 **3.3 Payment Procedures**

2 All payments required by this Consent Judgment are due within ten (10) days of the
3 Effective Date, and shall be delivered to 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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Held's Public Release of Proposition 65 Claims**

10 This Consent Judgment is a full, final and binding resolution of all claims that were or could
11 have been asserted in the Action arising out of Stila's alleged failure to provide Proposition 65
12 warnings for the Products. Held, acting on his own behalf and in the public interest, releases Stila
13 and their respective parents, subsidiaries, affiliated entities under common ownership, directors,
14 officers, employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly
15 distribute or sell the Products including, but not limited to, their downstream distributors,
16 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
17 ("Downstream Releasees"), for violations arising under Proposition 65 for unwarned exposures to
18 benzophenone from the Products prior to the Effective Date, as set forth in the Notice.

19 **4.2 Held's Individual Release of Claims**

20 Held, in his individual capacity only and *not* in his representative capacity, also provides a
21 release to Stila, Releasees, and Downstream Releasees which shall be effective as a full and final
22 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
23 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
24 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
25 exposures to benzophenone in the Products before the Effective Date.

26 **4.3 Stila's Release of Held**

27 Stila on behalf of itself, its past and current agents, representatives, attorneys, successors
28 and/or assignees, hereby waives any and all claims against Held, his attorneys and other

1 representatives, for any and all actions taken or statements made (or those that could have been
2 taken or made) by Held and his attorneys and other representatives, whether in the course of
3 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
4 respect to the Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

10 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
11 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
12 remaining shall not be adversely affected.

13 **7. GOVERNING LAW**

14 The terms of this Settlement Agreement shall be governed by the laws of the state of
15 California and apply within the state of California. Benzophenone is listed pursuant to Proposition
16 65 as a chemical that is known to the State of California to cause cancer. In the event that
17 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to
18 the Products, including the delisting of benzophenone, then Stila may provide written notice to Held
19 of any asserted change in the law, and with the exception of sections 3.1 and 3.2 above, have no
20 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
21 that, the Products are so affected.

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
26 other party at the following addresses:
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To Stila:

Albert T. Liou, Esq.
LKP Global Law, LLP
1901 Avenue of the Stars, Suite 480
Los Angeles, California 90067

To Anthony E. Held, Ph.D., P.E.:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Held and Stila agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Held shall draft and file, and Stila shall join. If any third party objection to the noticed motion is filed, Held and Stila shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

In the event OEHHA designates a No-Significant Risk Level (“NSRL”) for benzophenone, according to which Stila asserts would allow for the Products to contain levels of benzophenone in amounts greater than those set forth above in Section 2.1, Stila’s obligations under this Consent Judgment are modified accordingly, without further written agreement. Held may provide written

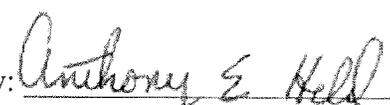
1 notice to Stila of any assertion that such designation should not apply to the Consent Judgment, and
2 the parties shall confer within 30 days to attempt to agree on Held's assertion, if any. Otherwise,
3 this Consent Judgment may be modified only by a written agreement of the parties.

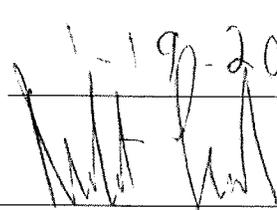
4 **13. DISPUTE RESOLUTION**

5 If Held determines at a future date that a violation of this agreement has occurred, Held shall
6 provide notice to Stila. Prior to bringing any action to enforce any requirement of this Consent
7 Judgment, the party alleging a violation of this settlement agreement shall provide the other party
8 with written notice of the grounds for such allegation together with all supporting information as
9 well as a complete demand for the relief sought. The parties shall then meet and confer regarding
10 the basis for the allegation in an attempt to resolve the matter informally, including providing the
11 party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure any
12 alleged violation. Should such attempts at informal resolution fail, the party alleging a violation
13 may file its lawsuit seeking the proposed relief.

14 **14. AUTHORIZATION**

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

18 AGREED TO:
19
20 Date: 1/19/2016
21 By: 
22 Anthony E. Held, Ph.D., P.E.

AGREED TO:
Date: 1-19-2016
By: 
Robert Leonardo, CFO
Stila Styles, LLC

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