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

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN MATEO
11 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.,) Case No. CIV 496247
13)
14 Plaintiff,)
15)
16 v.)
17 CHARMANT, INC.; LUXOTTICA USA, INC.;)
18 and BURLINGTON COAT FACTORY) **CONSENT JUDGMENT AS TO**
19 WAREHOUSE CORPORATION; and DOES 4) **CHARMANT, INC.**
20 through 150, inclusive,)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Charmant, Inc.**

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

6 **1.2 Plaintiff.**

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

10 **1.3 Defendant.**

11 Charmant 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 Dr. Held alleges that Charmant has manufactured, distributed and/or sold eyewear cases
16 containing di(2-ethylhexyl)phthalate (“DEHP”) for use in the State of California without the
17 requisite health hazard warnings. DEHP is listed pursuant to Proposition 65 as a chemical known
18 to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Notices of Violation.**

20 On March 19, 2010, and April 9, 2010, Dr. Held served Charmant, Luxottica USA, Inc.,
21 Burlington Coat Factory Warehouse Corporation, and various public enforcement agencies with
22 documents entitled “60-Day Notice of Violation” and “Supplemental 60-Day Notice of
23 Violation,” respectively, that alleged that Charmant violated Proposition 65 by failing to warn
24 consumers that eyewear cases including, but not limited to, *Eyewear Case with Sunglasses, Style:*
25 *PUMA, #30599, #809-29271810*, exposed users in California to DEHP.

26 **1.6 Complaint.**

27 On June 23, 2010, Dr. Held filed a complaint in this action, naming Charmant as a
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1 defendant, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures
2 to DEHP contained in eyewear cases manufactured, distributed, or sold by Charmant.

3 **1.7 No Admission.** The Parties enter into this Consent Judgment as a full and final
4 settlement of all claims that were raised in the Complaint or that could have been raised in the
5 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent
6 Judgment and agreeing to comply with its terms, Charmant does not admit any facts or
7 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
8 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
9 requirements relating to DEHP in Covered Products. Nothing in this Consent Judgment shall be
10 construed as an admission by Charmant of any fact, conclusion of law, issue of law or violation of
11 law, nor shall compliance with the Consent Judgment constitute or be construed as an admission
12 by Charmant of any fact, conclusion of law, issue of law, or violation of law. Nothing in this
13 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense
14 Charmant may have in this or any other or future legal proceedings. This Consent Judgment is
15 the product of negotiation and compromise and is accepted by Charmant for purposes of settling,
16 compromising, and resolving issues disputed in this action. However, this section shall not
17 diminish or otherwise affect the obligations, responsibilities and duties of Charmant under this
18 Consent Judgment.

19 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, Charmant
20 stipulates that this Court has jurisdiction over Charmant as to the allegations contained in the
21 Complaint, that venue is proper in the County of San Mateo and that this Court has jurisdiction to
22 enter and enforce the provisions of this Consent Judgment.

23 **2. Definitions.**

24 2.1 “Covered Products” means eyewear cases.

25 2.2 “Effective Date” means the date this Consent Judgment is approved by the court.

26 **3. INJUNCTIVE RELIEF: REFORMULATION**

27 3.1 Commencing December 15, 2010, Charmant shall not sell or offer for sale in
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1 California any Covered Product containing DEHP in concentrations exceeding 0.1 percent (1,000
2 parts per million (“ppm”)) when analyzed pursuant to any methodology utilized by federal or
3 state agencies for the purpose of determining DEHP content in a solid substance.

4 **4. ENFORCEMENT OF CONSENT JUDGMENT**

5 4.1 **General Enforcement Provisions.** Any Party may, by motion or application for
6 an order to show cause before the Superior Court of the County of San Mateo, enforce the terms
7 and conditions contained in this Consent Judgment. A Party may file such a motion or
8 application only after that Party first provides 30 days notice to the Party allegedly failing to
9 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
10 Party’s failure to comply in an open and good faith manner for a period of no less than 30 days.

11 **5. MONETARY PAYMENTS**

12 5.1 **Payments Made Pursuant to Health & Safety Code §25249.7(b).**

13 Charmant shall pay \$5,000 to be apportioned in accordance with California Health &
14 Safety Code §25192, with 75% of these funds remitted to the State of California’s Office of
15 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the amount
16 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d).
17 Charmant shall issue two separate checks for the payment: (a) one check made payable to “The
18 Chanler Group in trust For OEHHA” in the amount of \$3,750, representing 75% of the total
19 payment; and (b) one check to “The Chanler Group in trust for Anthony Held” in the amount of
20 \$1,250, representing 25% of the total payment. Two separate 1099s shall be issued for the above
21 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
22 Anthony Held, whose information shall be provided five calendar days before the payment is due.

23 Payment shall be delivered to Dr. Held’s counsel within two business days of the
24 Effective Date, at the following address:

25 The Chanler Group
26 Attn: Proposition 65 Controller
27 2560 Ninth Street
28 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

1 **5.2 Reimbursement of Fees and Costs.**

2 Pursuant to Code of Civil Procedure §1021.5, Charmant shall reimburse Dr. Held and his
3 counsel a total of \$33,000 for fees and costs incurred as a result of investigating, bringing this
4 matter to Charmant’s attention, and litigating and negotiating a settlement in the public interest.
5 Charmant shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the
6 check payable to “The Chanler Group” and to be delivered within two business days of the
7 Effective Date, to the following address:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710-2565

11 **6. CLAIMS COVERED AND RELEASE**

12 6.1 This Consent Judgment is a full, final, and binding resolution between Dr. Held
13 and Charmant and its parents, shareholders, divisions, subdivisions, subsidiaries, partners,
14 affiliates, and sister companies and their successors and assigns (“Defendant Releasees”), and
15 their distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,
16 and licensees, and any other person or entity to whom they directly or indirectly distribute or sell
17 Covered Products, including but not limited to Avant-Garde Optics, LLC (erroneously named as
18 Luxottica USA, Inc.) and its parents, subsidiaries, and affiliates (“Downstream Defendant
19 Releasees”) of any violation of Proposition 65 that has been or could have been asserted in the
20 public interest against Charmant, Defendant Releasees, and Downstream Defendant Releasees
21 regarding the failure to warn about exposure to DEHP in Covered Products.

22 6.2 Dr. Held on behalf of himself, his past and current agents, representatives,
23 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all
24 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
25 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
26 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
27 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
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1 whether known or unknown, fixed or contingent (collectively "Claims"), against Charmant,
2 Defendant Releasees, and Downstream Defendant Releasees arising from any violation of
3 Proposition 65 regarding the failure to warn about exposure to DEHP in Covered Products.

4 6.3 Dr. Held also, in his individual capacity only and *not* in his representative
5 capacity, provides a general release herein which shall be effective as a full and final accord and
6 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
7 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
8 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint.
9 Dr. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
10 provides as follows:

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

16 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives
17 and relinquishes any and all rights and benefits which he may have under, or which may be
18 conferred on him by the provisions of Section 1542 of the California Civil Code as well as under
19 any other state or federal statute or common law principle of similar effect, to the fullest extent
20 that he may lawfully waive such rights or benefits pertaining to the released matters. In
21 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
22 complete release notwithstanding the discovery or existence of any such additional or different
23 claims or facts arising out of the released matters.

24 6.4 Charmant waives any and all Claims against Dr. Held, his attorneys, and other
25 representatives for any and all actions taken or statements made (or those that could have been
26 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
28 matter, and/or with respect to the Covered Products.

6.5 Charmant also provides a general release herein which shall be effective as a full

1 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
2 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr. Held of any
3 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
4 matter of the Action. Charmant acknowledges that it is familiar with Section 1542 of the
5 California Civil Code, which provides as follows:

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

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

16 7. COURT APPROVAL

17 7.1 By this Consent Judgment and upon its approval, the Parties waive their right to
18 trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
19 including all pleading, procedural, and discovery orders.

20 7.2 Plaintiff shall file a motion seeking approval of this Consent Judgment pursuant to
21 California Health & Safety Code §25249.7(f), and Charmant shall support the entry of such
22 motion.

23 7.3 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
24 and any and all prior agreements between the parties merged herein shall terminate and become
25 null and void, and the action shall revert to the status that existed prior to the execution date of
26 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
27 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
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1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
2 action, or in any other proceeding; and (c) the parties agree to meet and confer to determine
3 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

4 **8. ATTORNEYS' FEES**

5 8.1 Except as specifically provided in Section 5.2, or if a third party elects to appeal
6 the approval of the Consent Judgment, each Party shall bear its own costs and attorney's fees in
7 connection with this action.

8 **9. GOVERNING LAW**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California, and shall apply only to Covered Products offered for sale in the State of California. In
11 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
12 generally, or as to the Products, then Charmant may provide written notice to Dr. Held of any
13 asserted change in the law, and shall have no further obligations pursuant to this Consent
14 Judgment with respect to, and to the extent that, the Products are so affected.

15 9.2 The Parties, including their counsel, have participated in the preparation of this
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
19 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
20 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
21 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
22 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
23 this regard, the Parties hereby waive California Civil Code § 1654.

24 **10. NOTICES**

25 10.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
27 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
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1 Party by the other Party at the following addresses:

2 To Charmant:

3 Keith Andreotta
4 Charmant USA
5 400 American Road
6 Morris Plains, NJ 07950

7 With a copy to:

8 Jeffrey B. Margulies, Esq.
9 Fulbright & Jaworski LLP
10 555 South Flower Street
11 41st Floor
12 Los Angeles, California 90071
13 213-892-9286
14 213-892-9494 fax
15 jmarginulies@fulbright.com

16 To Dr. Held:

17 Proposition 65 Coordinator
18 The Chanler Group
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

22 10.2 Any Party, from time to time, may specify in writing to the other Party a change of
23 address to which all notices and other communications shall be sent.

24 **11. MODIFICATION**

25 11.1 **Modification.** This Consent Judgment may be modified by written agreement of
26 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
27 Party and entry of a modified Consent Judgment by the court.

28 11.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
regulation is adopted that addresses the DEHP content of Covered Products sold in California,
any Party shall be entitled to request that the Court modify the reformulation standard of Section
3.1 of this Consent Judgment for good cause shown.

11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
modify the Consent Judgment.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. No supplementation, modification, waiver, or termination of this Consent Judgment
6 shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of
7 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
8 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
9 waiver.

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

14 14.1 This Consent Judgment may be executed in counterparts and by facsimile or
15 portable document format (pdf), each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document.

17 **15. AUTHORIZATION**

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>2010-08-06</u></p> <p><i>Anthony E Held</i></p> <p>By: _____ Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant CHARMANT, INC.</p>
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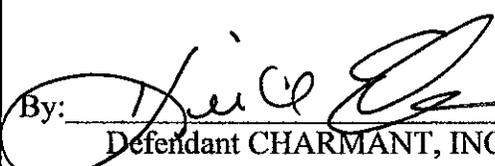
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16 when taken together, shall constitute one and the same document.

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

<p>22 AGREED TO:</p> <p>23 Date: _____</p> <p>24</p> <p>25 By: _____</p> <p>26 Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p> <p>27</p>	<p>22 AGREED TO:</p> <p>23 Date: <u>August 6, 2010</u></p> <p>24</p> <p>25 </p> <p>26 By: _____</p> <p>27 Defendant CHARMANT, INC.</p>
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT