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## The Lion Has Roared: Proposition 65 Settlements and the Attorney General

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California's Proposition 65 permits "private enforcers" to send Notices of Violation and bring lawsuits on behalf of the "public interest" where they purport to find trace amounts of banned chemicals at elevated levels in consumer goods. Given the large statutory damages provided by Proposition 65, the ease of making such a claim and the difficulty of defending against one, these private enforcers have been able to exact large attorneys' fees as part of the settlement process. The rub, however, is that the Legislature now requires that the Court actually approve any such settlement and review the attorneys' fees award for "reasonableness." But since the settling defendants are generally precluded by the very terms of their settlement from making any opposition, there really is no one to object to the reasonableness of the attorneys' fees being requested—until now! The Attorney General has the authority to either to take over the claim early in the case or, as part of the settlement-approval process, appear in the matter and be heard. And just yesterday, California Attorney General Kamala Harris actually submitted an Opposition to a Motion filed by the Chanler Law Group for approval of a Proposition 65 Consent Judgment based upon its request for exorbitant attorneys' fees and lack of documentation showing their reasonableness in light of the work actually done in the matter.

Just over one year ago, the parties in *Held v. Aldo, et al.*, entered into a Consent Judgment governing the amount of phthalates allowable in fashion accessories. The Consent Judgment included statutory penalties and attorneys' fees to cover the expense of reaching a settlement with the 14 initial settling defendants. In addition, the Consent Judgment contained a provision which allowed for other defendants to opt into the Consent Judgment. With each new defendant opting in, statutory fees were assessed and attorneys' fees were claimed in the amount awarded when the Consent Judgment was initially entered. In total, plaintiff's counsel was awarded \$2,247,076 for the initial settling defendants and first round of opt-ins.

Over the last six months, Plaintiff's counsel has allowed another 93 new defendants to opt into the Consent Judgment and has filed a request for Court approval. While Plaintiff's counsel had to do very little work to generate these new settlements, the request filed with the Court seeks a whopping additional \$3.3 million in attorneys' fees!

In keeping with Proposition 65's approval procedure, this request was filed with the Court and a copy submitted to the Attorney General for review. While the Attorney General has historically rarely objected to consent judgments, this \$3.3 million windfall to the Chanler Law Group appears to be more than the Attorney General could bear. On December 8, 2011, the Attorney General filed a formal Opposition to Approval of the Amended Consent Judgment in the *Held* matter. In sum, the Attorney General believes that the fees are excessive and that Plaintiff's billing statements are vague and include estimates of time, rather than actual time expended. The Attorney General suggests that a negative multiplier is appropriate to cut down on unreasonable fees and to implement the intended efficiency of an opt-in settlement.

While it is impossible to know how the Plaintiff's bar will react to the Attorney General's exercise of her authority, it seems that in the long run, we can expect a stemming of the inflation of the attorneys' fees requests that we have seen over the past several years.



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