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

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

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

16 Plaintiff,

17 v.

18 ALPHA GARMENT, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

Case No. CIV1103511

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Dr. Held alleges that Alpha has manufactured, distributed, and/or offered for sale in
16 California belts containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65
17 warnings. DEHP is listed pursuant to Proposition 65 as chemical known to the State of California
18 to cause birth defects and other reproductive harm (hereinafter the “Listed Chemical”).

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are belts containing the Listed
21 Chemical sold or distributed for sale in California by Alpha, including, but not limited to, the *Zana*
22 *Di Jeans Rockin Denim Pants with Belt, Style JJ9317RS4 (#8 83326 38295 7)*. Alpha’s belts
23 containing DEHP in excess of the DEHP Standard (as defined below) are referred to hereinafter as
24 the “Products.”

25 **1.6 Notice of Violation**

26 On or about April 19, 2011, Dr. Held served Alpha and various public enforcement agencies
27 with a document entitled 60-Day Notice of Violation (“Notice”) that provided Alpha and such
28

1 public enforcers with notice of Dr. Held’s allegation that Alpha was in violation of Proposition 65
2 for failing to warn consumers and customers in California that its belts exposed users to DEHP.

3 **1.7 Complaint**

4 On July 15, 2011, Dr. Held filed a complaint in the Marin County Superior Court
5 (“Complaint”), naming Alpha as a defendant and alleging violations of Proposition 65 based on the
6 allegations in the Notice.

7 **1.8 No Admission**

8 Nothing in this Consent Judgment shall be construed as an admission by Alpha of any fact,
9 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
10 Judgment constitute or be construed as an admission by Alpha of any fact, finding, conclusion,
11 issue of law, or violation of law, such being specifically denied by Alpha. However, this Section
12 shall not diminish or otherwise affect Alpha’s obligations, responsibilities and duties under this
13 Consent Judgment.

14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
16 jurisdiction over Alpha as to the allegations contained in the Complaint, that venue is proper in the
17 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
18 Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and binding
19 resolution of all claims which were or could have been raised in the Complaint against Alpha based
20 on the facts alleged therein and in the Notice.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 31, 2012.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Reformulation Standards**

25 As of the Effective Date, Alpha shall only ship, sell, or offer to ship for sale in California
26 “Reformulated Products”. For purposes of this Consent Judgment “Reformulated Products” shall
27 mean any Product containing a maximum DEHP concentration of 1,000 parts per million (the “DEHP
28 Standard”) in each accessible component when analyzed pursuant to U.S. Environmental Protection

1 Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or
2 state agencies for the purpose of determining DEHP content in a solid substance; provided, however,
3 that shipment, sale or offering for sale in California on or before the Effective Date by Alpha or its
4 customers of Products, which are on the date hereof, (i) in inventory, (ii) in production or (iii) on
5 route, shall not constitute a violation of this Consent Judgment.

6 However, Alpha may ship, sell or offer to ship for sale in California a Product that does not
7 meet the DEHP Standard, if the following conditions are met: (i) Alpha has determined that no
8 Reformulated Product or equivalent DEHP-free substitute product is “reasonably commercially
9 available”; (ii) the Product is not primarily intended for use by individuals twelve years of age or
10 younger; and (iii) Alpha complies with the warning requirements set forth in Section 2.2 below. For
11 purposes of this Section 2.1 “reasonable commercial availability” shall include consideration of the
12 following factors: availability and supply of a Reformulated Product or equivalent DEHP-free
13 product; cost of the Reformulated Product or equivalent DEHP-free product; performance
14 characteristics of the Reformulated Product or equivalent DEHP-free product, including but not
15 limited to performance, safety, and stability.

16 **2.2 Product Warnings**

17 Commencing on the Effective Date, Alpha shall, for all Products sold in California that do not
18 meet the DEHP Standard, provided the conditions in Section 2.1 are met, provide clear and
19 reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently
20 placed with such conspicuousness as compared with other words, statements, designs, or devices as
21 to render it likely to be read and understood by an ordinary individual under customary conditions
22 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
23 understands to which specific Product the warning applies, so as to minimize the risk of consumer
24 confusion.

25 **(a) Retail Store Sales**

26 (i) **Product Labeling.** Alpha shall affix a warning to the packaging,
27 labeling, or directly on each Product sold in retail outlets in California by Alpha or any person selling
28 the Products, that states:

1 WARNING: This product contains DEHP, a phthalate, and
2 other chemicals known to the State of
3 California to cause birth defects and other
4 reproductive harm.

5 (ii) Point-of-Sale Warnings. Alternatively, Alpha may provide warning
6 signs in the form below to its customers in California with instructions to post the warnings in close
7 proximity to the point of display of the Products. Such instruction sent to Alpha's customers shall
8 be sent by certified mail.

9 WARNING: This product contains DEHP, a phthalate, and
10 other chemicals known to the State of
11 California to cause birth defects and other
12 reproductive harm.

13 Where more than one Product is sold in proximity to other like items or to those that do not
14 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement
15 must be used:¹

16 WARNING: The following products contain DEHP, and
17 phthalate, and other chemicals known to the
18 State of California to cause birth defects and
19 other reproductive harm:

20 [*list products for which warning is required*]

21 **(b) Mail Order Catalog and Internet Sales**

22 In the event that Alpha sells Products via mail order catalog and/or the internet, to
23 customers located in California, after the Effective Date, and that are not Reformulated Products,
24 Alpha shall provide a warning for such Products sold via mail order catalog or the internet to
25 California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail
26 order catalog or on the internet shall identify the *specific* Product to which the warning applies as
27 further specified in Sections 2.2(b)(i) and (ii).

28 **(i) Mail Order Catalog Warning**

 Any warning provided in a mail order catalog of the Alpha must be in the same
 type size or larger than the Product description text within the catalog. The following warning shall

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 be provided on the same page and in the same location as the display and/or description of the
2 Product:

3 WARNING: This product contains DEHP, a phthalate, and
4 other chemicals known to the State of California
5 to cause birth defects and other reproductive
6 harm.

7 Where it is impracticable to provide the warning on the same page and in the
8 same location as the display and/or description of the Product, Alpha may utilize a designated symbol
9 to cross reference the applicable warning and shall define the term “designated symbol” with the
10 following language on the inside of the front cover of the catalog or on the same page as any order
11 form for the Product(s):

12 WARNING: Certain products identified with this symbol
13 ▼ and offered for sale in this catalog contain
14 DEHP, a phthalate, and other chemicals
15 known to the State of California to cause birth
16 defects and other reproductive harm.

17 The designated symbol must appear on the same page and in close proximity to
18 the display and/or description of the Product. On each page where the designated symbol appears,
19 Alpha must provide a header or footer directing the consumer to the warning language and definition
20 of the designated symbol.

21 **(ii) Internet Website Warning**

22 A warning may be given in conjunction with the sale of the Products by Alpha
23 via the internet, when the sale is to a consumer in California, provided it appears either: (a) on the
24 same web page on which a Product is displayed; (b) on the same web page as the order form for a
25 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
26 displayed to a purchaser during the checkout process. The following warning statement shall be used
27 and shall appear in any of the above instances adjacent to or immediately following the display,
28 description, or price of the Product for which it is given in the same type size or larger than the
Product description text:

1 WARNING: This product contains DEHP, a phthalate, and
2 other chemicals known to the State of California
3 to cause birth defects and other reproductive
4 harm.

5 Alternatively, the designated symbol may appear adjacent to or immediately following the
6 display, description, or price of the Product for which a warning is being given, provided that the
7 following warning statement also appears elsewhere on the same web page, as follows:

8 WARNING: Products identified on this page with the
9 following symbol ▼ contain DEHP, a
10 phthalate, and other chemicals known to the
11 State of California to cause birth defects and
12 other reproductive harm.

13 **3. MONETARY PAYMENTS**

14 **3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 On or before the Effective Date, Alpha shall make a payment of \$6,500 to be apportioned in
16 accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds
17 earmarked for the State of California’s Office of Environmental Health Hazard Assessment
18 (“OEHHA”) and the remaining 25% of these penalty monies earmarked for Dr. Held.

19 **3.2 Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

20 On or before December 31, 2012, Alpha shall pay a final civil penalty of \$13,000. As an
21 incentive to offer only Products that comply with the DEHP standard established by Section 2 in
22 advance of that time, however, Dr. Held agrees that the final civil penalty shall be waived in its
23 entirety if, on or before December 1, 2012, an officer of Alpha certifies in writing to Dr. Held’s
24 counsel that, as of December 31, 2012, Alpha will only ship, sell, or offer for sale in California
25 Reformulated Products. Such certification must be received by The Chanler Group on or before
26 December 1, 2012. The final civil penalty payment shall be apportioned in accordance with
27 California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the final civil penalty amount
28 remitted to OEHHA and the remaining 25% of the final civil penalty remitted to Dr. Held.

3.2 Reimbursement of Plaintiff’s Fees and Costs

 The Parties acknowledge that Dr. 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 this fee

1 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
2 other settlement terms had been finalized, Alpha expressed a desire to resolve the fee and cost issue.
3 The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his
4 counsel under general contract principles and the private attorney general doctrine codified at
5 California Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that
6 may be incurred on appeal. Under these legal principles, on or before the Effective Date, Alpha
7 shall pay \$30,000 for fees and costs incurred investigating, litigating and enforcing this matter,
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
9 Court's approval of this Consent Judgment in the public interest.

10 **3.3 Payment Procedures**

11 **3.3.1 Payments Held in Trust**

12 All payments made under this Consent Judgment shall be held in trust until the Court
13 approves the Consent Judgment. The Parties acknowledge that Dr. Held gave Alpha the option of
14 depositing the funds into its attorney's trust account, but that Alpha elected to have the funds held in
15 trust by The Chanler Group. The settlement funds shall be made payable by checks, as follows:

- 16 (a) "The Chanler Group in Trust for OEHHA" in the amount of \$4,875;
- 17 (b) "The Chanler Group in Trust for Anthony Held" in the amount of
18 \$1,625; and
- 19 (c) "The Chanler Group in Trust" in the amount of \$30,000.

20 **3.3.2 Issuance of 1099 Forms for Settlement Payments**

21 After the Consent Judgment has been approved, Alpha shall issue a 1099 form to
22 each of the following entities:

- 23 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,
24 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalty payment of \$4,875 to OEHHA;
- 25 (b) Anthony Held, whose address and tax identification number shall be
26 furnished upon request after this Consent Judgment has been fully executed by the Parties for the
27 civil penalty payment in the amount of \$1,625 to Dr. Held; and

1 (c) The Chanler Group (EIN: 94-3171522) for the fee and costs reimbursement
2 paid in the amount of \$30,000.

3 **3.3.3 Payment Address**

4 All payments and tax documents required by this Consent Judgment shall be
5 delivered to the following address:

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

13 Dr. Held acting on his own behalf and in the public interest releases Alpha from all claims for
14 violations of Proposition 65 up through the Effective Date based on exposures to the Listed Chemical
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 the Listed Chemical from the
17 Products as set forth in the Notice.

18 **4.3 Dr. Held's Individual Release of Claims**

19 Dr. Held also, in his individual capacity only and not in his representative capacity, 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 Dr. Held of any nature, character or kind, whether known or unknown,
23 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed
24 Chemical in the Products manufactured, distributed or sold by Alpha before the Effective Date.

25 **4.4 Alpha's Release of Dr. Held**

26 Alpha on behalf of itself, its past and current agents, representatives, attorneys, successors,
27 and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been taken
or made) by Dr. Held and his attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
2 respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties, in which event any monies that have been provided to
7 Dr. Held or his counsel pursuant to Section 3 above shall be refunded within fifteen (15) days after
8 receiving written notice from Alpha that the one-year period has expired.

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 Consent Judgment shall be governed by the laws of the state of California
15 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
16 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Alpha
17 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
18 extent that, the Products are so affected.

19 **8. NOTICES**

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

24 For Alpha Garment, Inc.:

25 William N. Le, Esq.
26 Edwards Wildman Palmer LLP
27 660 Newport Center Drive
28 Suite 900
Newport Beach, CA 92660

1 For Dr. Held:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Dr. Held agrees to comply with the reporting form requirements referenced in California
15 Health & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to
16 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval
17 of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Alpha and their
18 respective counsel agree to mutually employ their best efforts to support the entry of this agreement
19 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
20 manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the
21 drafting and filing of any papers in support of the required motion for judicial approval.

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
24 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
25 any party and entry of a modified consent judgment by the Court.

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1 **12. AUTHORIZATION**

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

4 **AGREED TO:**

AGREED TO:

5
6 By: Anthony E. Held
7 ANTHONY E. HELD, PH.D., P.E.

By: _____
ALPHA GARMENT, INC.

8 **APPROVED**
9 Date: By Anthony Held at 2:06 pm, May 14, 2012

Name: _____

Title: _____

Date: _____


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12. AUTHORIZATION

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

AGREED TO:
By: _____
ANTHONY E. HELD, PH.D., P.E.

AGREED TO:
By: 
ALPHA GARMENT, INC.
Name: Assad Charles Jebara
Title: VP
Date: 5/8/12

Date: _____

Title: _____

Date: _____