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SACRAMENTO COURTS
DEPT. #53

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

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

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

17 v.

18 WEAR ME APPAREL LLC; KIDS
19 HEADQUARTERS; and DOES 1 through
20 150, inclusive,
21 Defendants.

Case No. 34-2008-00019508

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**

Date: January 7, 2009
Time: 2:00 p.m.
Dept: 53
Judge: Loren E. McMaster

BY FAX

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant WEAR ME APPAREL LLC, dba KIDS HEADQUARTERS, having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a Stipulation and [Proposed] Order Re: Consent Judgment entered into by the parties, and following issuance of an order approving this Proposition 65 settlement agreement and entering the Stipulation and Order Re: Consent Judgment on January 7, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.5, judgment is entered in accordance with the terms of the Stipulation and Order Re: Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

IT IS SO ORDERED.

Dated: JAN - 7 2009

LOREN E. McMASTER
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
David R. Bush, State Bar No. 154511
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
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5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

7 Christopher Locke, State Bar No. 101704
Ruth Ann Castro, State Bar No. 209448
8 FARELLA BRAUN & MARTEL, LLP
235 Montgomery Street, 30th Floor
9 San Francisco, California 94104
Telephone: (415) 954-4400
10 Facsimile: (415) 954-4480

11 Attorneys for Defendant
WEAR ME APPAREL LLC dba
12 KIDS HEADQUARTERS

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SACRAMENTO
16 UNLIMITED CIVIL JURISDICTION
17

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

19 Plaintiff,

20 v.

21 WEAR ME APPAREL LLC, KIDS
HEADQUARTERS, and DOES 1-150,

22 Defendants.
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Case No. 34-2008-00019508 CU-MC-GDS

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

28 10/31/2008 2:03 PM

STIPULATION AND [PROPOSED] ORDER RE:
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., Wear Me Apparel LLC, and Kids**
3 **Headquarters.**

4 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
5 P.E. ("Dr. Held" or "Plaintiff") and Defendant Wear Me Apparel LLC dba Kids Headquarters
6 ("Wear Me"). Plaintiff filed a Complaint erroneously naming Defendant Kids Headquarters as a
7 separate entity. Plaintiff Held and Wear Me are collectively referred to as the "Parties."

8 **1.2 Plaintiff**

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

12 **1.3 Defendant**

13 Wear Me employs ten or more employees, and is a "person in the course of doing
14 business" within the meaning of the Safe Drinking Water and Toxic Enforcement Act of 1986,
15 California Health & Safety Code §25249.6 *et seq.* (Proposition 65).

16 **1.4 General Allegations**

17 Dr. Held alleges that Wear Me has manufactured, distributed and/or sold children's jackets
18 containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the
19 requisite health hazard warnings. DEHP is known to cause birth defects and other reproductive
20 harm and is listed by its chemical nomenclature pursuant to Proposition 65. DEHP is listed by the
21 State of California under Proposition 65 and shall be referred to hereinafter as the "Listed
22 Chemical."

23 **1.5 Product Description**

24 For purposes of this Consent Judgment, the term "Covered Products" shall be defined as
25 children's jackets containing the Listed Chemical that are (i) distributed, sold or used within the
26 State of California, (ii) bear the Avirex trademark or other Avirex-related trademarks, and (iii) are
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1 manufactured, distributed or sold by or on behalf of Wear Me, including but not limited to, the
2 Avirex 3-piece Set, #49973004T.

3 **1.6 Notice of Violation**

4 On May 23, 2008, Dr. Held served Wear Me and various public enforcement agencies with
5 a document entitled "60-Day Notice of Violation" ("Notice") that provided Wear Me and public
6 enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for
7 failing to warn consumers that the Covered Products exposed users in California to DEHP.

8 **1.7 Settlement Discussions**

9 The Parties have engaged in discussions since June 2008 to resolve the disputed claims,
10 and reached the settlement described herein.

11 **1.8 Complaint**

12 On August 15, 2008, Dr. Held, who was and is acting in the interest of the general public
13 in California, filed a complaint ("Complaint") in the Superior Court in and for the County of
14 Sacramento against Wear Me and Kids Headquarters and Does 1-150, alleging violations of
15 California Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained in
16 the Covered Products.

17 **1.9 No Admission**

18 Wear Me asserts that it has conducted testing of the Covered Products and responded to the
19 Notice within the 60-day period, and denies the material, factual, and legal allegations contained
20 in Dr. Held's Notice and Complaint and maintain that all Covered Products sold and distributed in
21 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall
22 be construed as an admission by Wear Me of any fact, finding, issue of law, or violation of law,
23 nor shall compliance with this Consent Judgment constitute or be construed as an admission by
24 Wear Me of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
25 denied by Wear Me. However, this Section shall not diminish or otherwise affect Wear Me's
26 obligations, responsibilities, and duties under this Consent Judgment.

1 **1.10 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Wear Me as to the allegations contained in the Complaint, that venue is proper in
4 the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions
5 of this Consent Judgment.

6 **2. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

7 **2.1 Product Warnings**

8 As of October 31, 2008, Wear Me shall not ship or offer to be shipped for sale in
9 California any Covered Products containing the Listed Chemical unless such Covered Products
10 are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a)
11 and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards
12 set forth in Section 2.3.

13 Each warning shall be prominently placed with such conspicuousness as compared with
14 other words, statements, designs, or devices as to render it likely to be read and understood by an
15 ordinary individual under customary conditions before purchase or use. Each warning shall be
16 provided in a manner such that the consumer or user understands to which *specific* Covered
17 Product the warning applies, so as to minimize if not eliminate the chance that an overwarning
18 situation will arise. The warning requirement shall apply when the Covered Product is sold either
19 to consumers or in a business-to-business transaction for distribution in California.

20 **(a) Retail Store Sales.**

21 **(i) Product Labeling.**

22 Wear Me may perform its warning obligation by ensuring that a warning is affixed to the
23 packaging, labeling, or directly on each Covered Product sold in retail outlets by Wear Me or its
24 agents, that states:

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WARNING: This product contains DEHP, a phthalate
chemical known to the State of California to
cause birth defects and other reproductive
harm.

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(ii) Point-of-Sale Warnings.

Wear Me may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Covered Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Covered Products that states.

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Where more than one Covered Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:¹

WARNING: The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

[List products for which warning is required]

(b) Mail Order Catalog and Internet Sales.

Wear Me shall satisfy its warning obligations for Covered Products sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) Mail Order Catalog Warning.

Any warning provided in a mail order catalog must be in the same type size or larger than

¹ For purposes of the Consent Judgment, "sold in proximity" shall mean that the Covered 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 the Product description text within the catalog. The following warning shall be provided on the
2 same page and in the same location as the display and/or description of the Product:

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

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

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

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

22 If Wear Me elects to provide warnings in the mail order catalog, then the warnings must be
23 included in all catalogs offering to sell one or more Covered Products printed after October 31,
24 2008.

25 (ii) **Internet Website Warning.**

26 A warning may be given in conjunction with the sale of the Product via the Internet,
27 provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the
28 same web page as the order form for the Product; (c) on the same page as the price for any
Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.
The following warning statement shall be used and shall appear in any of the above instances
adjacent to or immediately following the display, description, or price of the Product for which it

1 is given in the same type size or larger than the Product description text:

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

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

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

14 **2.2 Exceptions To Warning Requirements**

15 The warning requirements set forth in Section 2.1 shall not apply to: Reformulated
16 Products (as defined in Section 2.3 below).

17 **2.3 Reformulation Standards**

18 Reformulated Products are defined as those Covered Products containing less than 1000
19 ppm of the Listed Chemical (DEHP), as measured by Environmental Protection Agency ("EPA")
20 testing methodologies 3580A, 3550C and/or 8270C. The warnings required pursuant to Section
21 2.1 above shall not be required for such Reformulated Products. Further, the Parties agree that the
22 reformulation standard described in this section applies only to the Covered Products and not to
23 any other children's apparel item.

24 **2.4 Reformulation and/or Discontinuation of Products**

25 Wear Me hereby commits that, effective as of October 31, 2008, one hundred percent
26 (100%) of the Covered Products manufactured for sale in California shall qualify as Reformulated
27 Products. Wear Me also represents that, as a direct result of the Notice issued on May 23, 2008, it
28 took steps to implement a process for the reformulation of the Avirex 3 Piece Set # 49973004T to
29 eliminate the presence of DEHP and/or discontinue the sale of the Avirex 3 Piece Set #
30 49973004T in California.

1 **3. MONETARY PAYMENTS**

2 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

3 Pursuant to Health & Safety Code §25249.7(b), Wear Me shall pay \$3,600 in civil
4 penalties. The civil penalties to be apportioned in accordance with California Health & Safety
5 Code §25192, with 75% of these funds remitted to the State of California's Office of
6 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
7 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). Wear
8 Me shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst
9 & Chanler LLP in Trust For OEHHA" in the amount of \$2,700 representing 75% of the total
10 penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of
11 \$900, representing 25% of the total penalty. Two separate 1099s shall be issued for the above
12 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)
13 Anthony Held, whose information shall be provided five calendar days before the payment is due.

14 Payment shall be delivered on or before November 14, 2008, to Dr. Held's counsel at the
15 following address:

16 Hirst & Chanler LLP
17 Attn: Proposition 65 Controller
18 Capitol Mall Complex
19 455 Capitol Mall, Suite 605
20 Sacramento, CA 95814

19 **4. REIMBURSEMENT OF FEES AND COSTS**

20 **4.1 Attorney Fees and Costs**

21 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
23 this fee issue to be resolved after the material terms of the agreement had been settled. After the
24 other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
25 compensation due to Dr. Held and his counsel under general contract principles and the private
26 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
27 work performed through the mutual execution of this agreement and the anticipated work to seek

1 court approval. Wear Me shall reimburse Dr. Held and his counsel for fees and costs incurred as a
2 result of investigating, bringing this matter to Wear Me's attention, and litigating and negotiating a
3 settlement in the public interest. Wear Me shall pay Dr. Held and his counsel \$16,400 for fees and
4 costs incurred as a result of investigating, bringing this matter to Wear Me's attention, and
5 litigating and negotiating a settlement in the public interest. Wear Me shall issue a separate 1099
6 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP"
7 and shall be delivered on or before November 14, 2008, to the following address:

8 Hirst & Chanler LLP
9 Attn: Proposition 65 Controller
10 Capitol Mall Complex
11 455 Capitol Mall, Suite 605
12 Sacramento, CA 95814

13 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

14 Pursuant to CCP §§1021 and 1021.5, the Parties further agree that Wear Me will reimburse
15 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval
16 of this settlement agreement in the trial court and completing other necessary tasks after the
17 execution of the Consent Judgment in an amount not to exceed \$6,500. Such additional fees and
18 costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but are
19 not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
20 requirements referenced in Health & Safety Code §25249.7(f), responding to any third party
21 objections, filing of notice of entry of the judgment, corresponding with opposing counsel and
22 appearing before the Court related to the approval process.

23 Reimbursement of such additional fees and costs shall be due within ten calendar days
24 after receipt of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the
25 Additional Fee Claim shall be made to "Hirst & Chanler LLP," and the payment shall be
26 delivered, at the following address:

27 HIRST & CHANLER LLP
28 Attn: Proposition 65 Controller
Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

1 shareholders, agents, insurers and representatives of each of them (collectively "Releasees") in this
2 Action. This release is limited to those Claims that arise under Proposition 65, as such Claims
3 relate to Wear Me's alleged failure to warn about exposures to the Listed Chemical contained in
4 the Covered Products.

5 The Parties further understand and agree that this release shall not extend upstream to any
6 entities that manufactured the Covered Products for Wear Me (except for Covered Products
7 manufactured by Wear Me) or any component parts thereof or to any distributors or suppliers who
8 sold the Covered Products or any component parts thereof to Wear Me.

9 **5.2 Wear Me's Release of Dr. Held**

10 Wear Me waive any and all Claims against Dr. Held, his attorneys, and other
11 representatives for any and all actions taken or statements made (or those that could have been
12 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
13 investigating Claims or otherwise seeking enforcement of Proposition 65 against them in this
14 matter, and/or with respect to the Covered Products.

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one
18 year after it has been fully executed by all Parties. If the Court does not approve the Consent
19 Judgment, the Parties shall meet and confer as to (and jointly agree on) whether to modify the
20 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take, then
21 the case shall proceed in its normal course on the Court's calendar. In the event that this Consent
22 Judgment is entered by the Court and subsequently overturned by any appellate court or the
23 motion to approve is not ultimately granted, any monies that have been provided to Plaintiff, or his
24 counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen days of the
25 appellate decision becoming final. If the Court's approval is ultimately overturned by an appellate
26 court, the Parties shall meet and confer as to (and jointly agree on) whether to modify the terms of

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1 the Consent Judgment. If the Parties do not jointly agree on a course of action to take, then the
2 case shall proceed in its normal course on the trial court's calendar.

3 **7. SEVERABILITY**

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

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of
9 California and apply within the State of California.

10 **9. NOTICES**

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

15 To Wear Me:

16 Eric Gul, Esq.
17 WEAR ME APPAREL LLC
18 31 West 34th Street, 4th Floor
19 New York, NY 10001

20 With a copy to:

21 Ruth Ann Castro, Esq.
22 FARELLA BRAUN & MARTEL, LLP
23 235 Montgomery Street, 30th Floor
24 San Francisco, California 94104

25 To Dr. Held:

26 Proposition 65 Coordinator
27 HIRST & CHANLER LLP
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile, each of which
5 shall be deemed an original, and all of which, when taken together, shall constitute one and the
6 same document.

7 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

8 Dr. Held agrees to comply with the reporting form requirements referenced in California
9 Health & Safety Code §25249.7(f).

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 Dr. Held and Wear Me agree to mutually employ their best efforts to support the entry of
12 this agreement as a Consent Judgment to obtain approval of the Consent Judgment by the trial
13 court in a timely manner and defend the agreement against any appellate review. The Parties
14 acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is
15 required to obtain judicial approval of this Consent Judgment. Accordingly, Dr. Held agrees to
16 file a Motion to Approve the Consent Judgment.

17 **13. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
20 of any party and entry of a modified Consent Judgment by the Court.

21 **14. AUTHORIZATION**

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

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AGREED TO:

APPROVED

By Anthony E Held at 7:25 pm, 10/28/08

Date: _____
By: *Anthony E Held*
Plaintiff, ANTHONY E. HELD,
Ph.D., P.E.

AGREED TO:

Date: *10/28/08*
By: *[Signature]*
Cory Silverstein
Executive Vice President
Defendant, WEAR ME APPAREL LLC

Date: *10/28/08*
By: *[Signature]*
Cory Silverstein
Executive Vice President
Defendant, KIDS HEADQUARTERS

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP
By: _____
David Bush
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

Date: *10/31/08*
FARELLA BRAUN & MARTEL, LLP
By: *[Signature]*
Beth Ann Castro
Attorneys for Defendant
WEAR ME APPAREL LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: _____
By: Plaintiff ANTHONY E. HELD,
Ph.D., P.E.

APPROVED AS TO FORM:

Date: Nov. 4, 2008
HIRSH & GRANLER LLP
By: [Signature]
David Bush
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

IT IS SO ORDERED.

Date: _____

AGREED TO:

Date: 10/21/08
By: [Signature]
Eric Silverstein
Executive Vice President
Defendant, WEAR ME APPAREL, LLC

Date: 10/21/08
By: [Signature]
Eric Silverstein
Executive Vice President
Defendant, KIDS HEADQUARTERS

APPROVED AS TO FORM:

Date: 10/31/08
FARELLA BRAUN & MARTEL, LLP
By: [Signature]
Beth Ann Castro
Attorneys for Defendant
WEAR ME APPAREL LLC

JUDGE OF THE SUPERIOR COURT

-13-
STIPULATION AND PROPOSED ORDER RE
CONSENT JUDGMENT