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Clifford A. Chanler, State Bar No. 135534
David S. Lavine, State Bar No. 166744
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 935-8116

RECEIVED
SUPERIOR COURT OF CALIFORNIA
CENTRAL JUSTICE CENTER

MAY 11 2009

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 01 2009

ALAN CARLSON, Clerk of the Court

C. Ramos
BY C. RAMOS

Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E. BY: M. WILSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

KITTRICH CORPORATION; J.C.
COLLINS, INC.; MLB CLUBHOUSE; and
~~DOES 1 through 150, inclusive,~~

Defendants.

Case No. 30-2009-00118955

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

Date: June 30, 2009
Time: 1:30 p.m.
Dept.: C14
Judge: Hon. Franz E. Miller

BY FAX

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant
KITTRICH CORPORATION, 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 June 30, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
Procedure §664.6, judgment is entered in accordance with the terms of the Stipulation and Order
Re: Consent Judgment attached hereto as **Exhibit 1**.

IT IS SO ORDERED.

Dated: 7/1/09

Judge Franz E. Miller
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 David Lavine, State Bar No. 166744
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE CITY AND COUNTY OF ORANGE
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 KITTRICH CORPORATION; J.C. COLLINS,
18 INC.; MLB CLUBHOUSE; and DOES 1
19 through 150, inclusive,

20 Defendants.

Case No. 30-2009-00118955

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Kittrich Corporation**

3 This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 ("Dr. Held" or "Plaintiff") and defendant Kittrich Corporation ("Kittrich" or "Defendant") with Dr.
5 Held and Kittrich collectively referred to as the "parties."

6 **1.2 Plaintiff Dr. Anthony Held**

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

10 **1.3 Defendant**

11 Kittrich 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 Dr. Held alleges that Kittrich has manufactured, distributed and/or sold certain sporting toys
16 containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of California without the
17 requisite health hazard warnings. DEHP is listed pursuant to Proposition 65, and is known to cause
18 birth defects and other reproductive harm. DEHP shall be referred to hereinafter as the "listed
19 chemical."

20 **1.5 Product Description**

21 The products that are covered by this consent judgment are defined as follows: sporting toys
22 containing DEHP including, but not limited to, *Plush NBA Mini Basketball, #84-186 (0 87508*
23 *06675 2)*, and *Lakers 2" Vinyl Basketball Key Ring, #32941981 (0 87508 06686 8)*. All such
24 sporting toys containing DEHP are referred to hereinafter as the "Products".

25 **1.6 Notice of Violation**

26 On or about July 10, 2008, Dr. Held served Kittrich and various public enforcement
27 agencies with a "60-Day Notice of Violation" (the "Notice") that provided Kittrich and public
28

1 enforcers with notice of alleged violations of Health & Safety Code §25249.6 for failing to warn
2 consumers that Products that Kittrich manufactured, distributed, and/or sold exposed users in
3 California to DEHP. As of the Effective Date, no public enforcer diligently prosecuted the
4 allegations set forth in the Notice.

5 **1.7 Complaint**

6 On February 20, 2009, Dr. Held, who was and is acting in the interest of the general public
7 in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
8 County of Orange against Kittrich Corporation; J.C. Collins, Inc.; MLB Clubhouse; and Does 1
9 through 150, alleging violations of California Health & Safety Code §25249.6 based on the alleged
10 exposures to the listed chemical contained in the Products sold by Kittrich.

11 **1.8 No Admission**

12 Kittrich denies the material, factual and legal allegations contained in Dr. Held's Notice and
13 Complaint and maintains that all Products that it has sold and distributed in California have been
14 and are in compliance with all laws. Nothing in this consent judgment shall be construed as an
15 admission by Kittrich of any fact, finding, issue of law, or violation of law, nor shall compliance
16 with this consent judgment constitute or be construed as an admission by Kittrich of any fact,
17 finding, conclusion, issue of law, or violation of law, such being specifically denied by Kittrich. In
18 order to avoid the costs and expenses of litigation and without admitting liability or wrongdoing,
19 Kittrich has elected to resolve this matter by settlement and on the terms set forth herein. However,
20 this section shall not diminish or otherwise affect Kittrich's obligations, responsibilities, and duties
21 under this consent judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this consent judgment only, the parties stipulate that this Court has
24 jurisdiction over Kittrich as to the allegations contained in the Complaint, that venue is proper in the
25 County of Orange and this Court has jurisdiction to enter and enforce this consent judgment as a full
26 and final binding resolution of all claims which were or could have been raised in the Complaint
27 against Kittrich based on the facts alleged therein and in the Notice.
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1.10 Effective Date

For purposes of this consent judgment, the term "Effective Date" shall mean May 29, 2009.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Kittrich shall not sell, ship, or offer to be shipped for sale in California any Products containing the listed chemical unless: such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3, below.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

(a) Retail Store Sales.

(i) Product Labeling. Kittrich may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in retail outlets by Kittrich or its agents, that states:

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

(ii) Point-of-Sale Warnings. Kittrich may, alternatively, perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the 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 Products that state:

1 the Product(s):

2 **WARNING:** Certain products identified with this
3 symbol ▼ and offered for sale in this
4 catalog contain DEHP, a phthalate
5 chemical known to the State of California
6 to cause birth defects and other
7 reproductive harm.

8 The designated symbol must appear on the same page and in close proximity to the display
9 and/or description of the Products. On each page where the designated symbol appears, Kittrich
10 must provide a header or footer directing the consumer to the warning language and definition of
11 the designated symbol.

12 If Kittrich elects to provide warnings in the mail order catalog, then the warnings must be
13 included in all catalogs offering to sell one or more Products printed after the date of entry of this
14 consent judgment.

15 (ii) **Internet Website Warning.** A warning may be given in conjunction
16 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page
17 on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)
18 on the same page as the price for any Product; or (d) on one or more web pages displayed to a
19 purchaser during the checkout process. The following warning statement shall be used and shall
20 appear in any of the above instances adjacent to or immediately following the display, description,
21 or price of the Products for which it is given in the same type size or larger than the Product
22 description text:

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

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

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

4 **2.2 Exceptions To Warning Requirements**

5 The warning requirements set forth in Section 2.1 shall not apply to:

- 6 (i) any Products received by Kittrich prior to receipt of the Notice, provided that
7 Kittrich does not have actual knowledge, or reason from communications
8 with its suppliers of the Products to believe, that the Listed Chemical is
9 present in such Products in concentrations exceeding 1000 ppm each;
- 10 (ii) any Product shipped by Kittrich to its customers in California prior to the
11 Effective Date; or
- 12 (iii) Reformulated Products (as defined in Section 2.3 below).

13 **2.3 Reformulation Standards**

14 Reformulated Products are defined as those containing less than 1,000 ppm of DEHP, as
15 measured by Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

16 **2.4 Reformulation Commitment**

17 Upon Kittrich's receipt of the Notice, Kittrich undertook immediate efforts to reformulate
18 the Products so as to eliminate the presence of DEHP. Kittrich hereby commits to use its best
19 efforts to reformulate one hundred percent (100%) of the Products that they offer for sale in
20 California after May 29, 2009 so that the Products shall qualify as Reformulated Products or shall
21 otherwise be exempt from the warning requirements.

22 **3. MONETARY PAYMENTS**

23 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

24 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
25 \$15,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code
26 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
27 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony
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1 Held as provided by California Health & Safety Code §25249.12(d). Kittrich shall issue two
2 separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in
3 Trust For OEHHA" in the amount of \$11,250, representing 75% of the total penalty; and (b) one
4 check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of \$3,750, representing
5 25% of the total penalty. Two separate 1099s shall be issued for the above payments to OEHHA,
6 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and to Held whose address and tax
7 identification number shall be furnished, upon request, five calendar days before payment is due.
8 The payments shall be delivered on or before May 29, 2009, to the following address:

9 HIRST & CHANLER LLP
10 Attn: Proposition 65 Controller
11 2560 Ninth Street
12 Parker Plaza, Suite 214
13 Berkeley, CA 94710

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

15 **4.1 Attorney Fees and Costs.**

16 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 this fee issue to be resolved after the material terms of the agreement had been settled. Kittrich then
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
20 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr.
21 Held and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the
23 mutual execution of this agreement. Kittrich shall reimburse Dr. Held and his counsel \$24,000 for
24 fees and costs incurred as a result of investigating, bringing this matter to Kittrich's attention, and
25 litigating and negotiating a settlement in the public interest. Kittrich shall issue a separate 1099 for
26 fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and
27 shall be delivered on or before May 29, 2009, to the following address:
28

1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 455 Capitol Mall, Suite 605
4 Sacramento, CA 95814

5 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

6 Pursuant to CCP §§1021 and 1021.5, the parties further agree that Kittrich will reimburse
7 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
8 this settlement agreement in the trial court and fulfilling other necessary tasks in an amount not to
9 exceed \$7,500. Such additional fees and costs, exclusive of fees and costs that may be incurred in
10 the event of an appeal include, but are not limited to, drafting and filing of the motion to approve
11 papers, fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f),
12 responding to any third-party objections, filing notice of entry of the Court's approval,
13 corresponding with opposing counsel and appearing before the Court related to the approval
14 process.

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

19 HIRST & CHANLER LLP
20 Attn: Proposition 65 Controller
21 455 Capitol Mall, Suite 605
22 Sacramento, CA 95814

23 Kittrich has the right to object to such reimbursement and may submit the resolution of this
24 issue to the American Arbitration Association (AAA) in Northern California to determine the
25 reasonableness of the additional fees and costs sought, provided that an arbitration notice, notice of
26 objection, or decision to arbitrate is received by Dr. Held by the end of the ten calendar days. If an
27 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the
28 Court pursuant to both CCP §1021.5 and this consent judgment to recover additional attorney fees
and costs incurred as set forth in this paragraph. In the event Kittrich submits the matter to
arbitration, Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and costs

1 incurred for the arbitration.

2 Dr. Held's counsel agrees that it shall hold all civil penalties and attorney's fees and costs
3 paid pursuant to Section 3.1 and 4.1 above in its trust account until such time as this consent
4 judgment is approved by the Court. In the event that this consent judgment is not approved by the
5 Court in the time prescribed in Section 6 of this consent judgment, the civil penalties and attorney's
6 fees and costs paid pursuant to Sections 3.1 and 4.1 above, along with interest accrued at the
7 existing federal funds rate, shall be refunded to Kittrich.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held's Release of Kittrich**

10 In further consideration of the promises and agreements herein contained, and for the
11 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
12 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
13 general public only as to mini-sporting toys, hereby waives all rights to institute or participate in,
14 directly or indirectly, any form of legal action and releases all claims including, without limitation,
15 all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
16 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
17 expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
18 contingent (collectively "Claims"), that were brought or could have been brought against Kittrich or
19 its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers,
20 licensors, licensees, or any other person in the course of doing business, and the successors and
21 assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell
22 Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers
23 and representatives of each of them (collectively "Defendant Releasees") in this Action. This
24 release is limited to, but is intended to be a full, final, and binding resolution of, those Claims that
25 arise under Proposition 65, as against Kittrich and Defendant Releasees, as such Claims relate to
26 Kittrich's alleged failure to warn about exposures to the Listed Chemical contained in the Products.
27 Accordingly, it is further understood and agreed by the Parties that Case No. 30-2009-00118955 as
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1 against Kittrich, J.C. Collins, Inc. and MLB Clubhouse shall be dismissed with prejudice upon
2 notice of entry of settlement approval.

3 The Parties further understand and agree that this release shall not extend upstream to any
4 entities that manufactured the Products for Kittrich or any component parts thereof or to any
5 distributors or suppliers who sold the Products or any component parts thereof to Kittrich.

6 **5.2 Kittrich's Release of Dr. Held**

7 Kittrich waives any and all claims against Dr. Held, his attorneys, and other representatives
8 for any and all actions taken or statements made (or those that could have been taken or made) by
9 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims
10 or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect
11 to the Products.

12 **6. COURT APPROVAL**

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

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1 **7. SEVERABILITY**

2 If, subsequent to the execution of this consent judgment, any of the provisions of this
3 consent judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining shall not be adversely affected.

5 **8. ENTIRE AGREEMENT**

6 This consent judgment contains the sole and entire agreement and understanding of the
7 parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
11 to exist or to bind any of the parties.

12 **9. GOVERNING LAW**

13 The terms of this consent judgment shall be governed by the laws of the State of California
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
15 rendered inapplicable by reason of state or federal law generally, or as to the Products, then Kittrich
16 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further
17 obligations pursuant to this consent judgment with respect to, and to the extent that, the Products are
18 so affected.

19 **10. NOTICES**

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

24 To Kittrich:
25 Robert Friedland, President
26 Kittrich Corporation
27 14555 Alondra Boulevard
28 La Mirada, CA 90638

1 To Dr. Held:

2 Proposition 65 Coordinator
3 HIRST & CHANLER, LLP
4 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

7 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

8 This consent judgment may be executed in counterparts and by facsimile, each of which
9 shall be deemed an original, and all of which, when taken together, shall constitute one and the
10 same document.

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

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

14 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

15 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a
16 noticed motion is required to obtain judicial approval of this consent judgment. Dr. Held and
17 Kittrich agree to mutually employ their best efforts to support the entry of this agreement as a
18 consent judgment by the trial court and defend the agreement against any appellate review.
19 Accordingly, Dr. Held agrees to file a motion to approve the consent judgment, and Kittrich agrees
20 to support it.

21 **14. MODIFICATION AND ATTORNEYS FEES**

22 This consent judgment may be modified only: (1) by written agreement of the parties and
23 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
24 any party and entry of a modified consent judgment by the Court. In the event that, after execution
25 of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions of this
26 Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
27 prevailing party shall be entitled to reasonable attorney's fees and costs.
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The undersigned are authorized to execute this consent judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this consent judgment.

<p>AGREED TO: APPROVED By Anthony E Held at 11:46 am, 5/1/09</p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> ANTHONY E HELD, Ph.D., P.E.</p>	<p>AGREED TO:</p> <p>Date: <u>4/30/09</u></p> <p>By: <u>[Signature]</u> Robert Friedland, President KITTRICH CORPORATION</p>
<p>APPROVED AS TO FORM:</p> <p>Date: <u>May 1, 2009</u></p> <p>HIRST & CHANLER LLP</p> <p>By: <u>[Signature]</u> David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>4/30/09</u></p> <p>WINTER & ASSOCIATES LLP</p> <p>By: <u>[Signature]</u> Todd Winter Attorneys for Defendant KITTRICH CORPORATION</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT