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**ENDORSED FILED**  
Clerk of the Superior Court

APR 5 - 2010

P. MORADA

By \_\_\_\_\_  
DEPUTY CLERK

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SOLANO  
9 UNLIMITED CIVIL JURISDICTION

11 ANTHONY E. HELD, Ph.D., P.E.,  
12 Plaintiff,  
13 v.  
14 GOLF GIFTS AND GALLERY, INC.; and  
15 DOES 1 through 150, inclusive,  
16 Defendants.

Case No. FCS032999

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF CONSENT JUDGMENT**

Date: February 18, 2010  
Time: 9:00 A.M.  
Dept.: 9  
Judge: Hon. Ramona Garrett

**BY FAX**

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Filed By  
**One Legal**

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant GOLF GIFTS AND GALLERY, INC., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment (“Consent Judgment”) entered into by the parties, and after issuing an order approving this Proposition 65 settlement agreement and entering the Consent Judgment on February 18, 2010.

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 Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

**IT IS SO ORDERED.**

Dated: 3-31-10

RAMONA J. GARRETT  
JUDGE OF THE SUPERIOR COURT

# **Exhibit 1**

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

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

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

Plaintiff,

v.

GOLF GIFTS AND GALLERY, INC.; and  
DOES 1 through 150, inclusive,

Defendant.

Case No. FCS 032999

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

Health & Safety Code § 25249.6 *et seq.*

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E., and Golf Gifts and Gallery, Inc.**

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

6             **1.2 Plaintiff**

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

10            **1.3 Defendant**

11            Golf Gifts employs ten or more persons and is a person in the course of doing business for  
12            purposes of Proposition 65.

13            **1.4 General Allegations**

14            Held alleges that Golf Gifts has manufactured, distributed, and/or sold in the State of  
15            California children’s vinyl bags containing di(2-ethylhexyl)phthalate (commonly referred to as  
16            “DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of  
17            1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical  
18            known to the State of California to cause birth defects and other reproductive harm. DEHP is  
19            referred to herein as the “Listed Chemical.”

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as children’s vinyl  
22            bags containing di(2-ethylhexyl)phthalate including, but not limited to, *Baby’s 1<sup>st</sup> Golf Bag (#7*  
23            *16419 03004 9)*. All such products containing DEHP are referred to hereinafter as the  
24            “Products”.

25            **1.6 Notice of Violation**

26            On October 10, 2089, Held served Golf Gifts and various public enforcement agencies  
27            with a “60-Day Notice of Violation” (the “Notice”) that provided Golf Gifts with notice of  
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1 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the  
2 Products that Golf Gifts sold exposed users in California to the Listed Chemical. After receiving  
3 the Notice, Golf Gifts began to immediately start the process of reformulating such Products and  
4 ceased any future shipment of those Products into California.

5 **1.7 Complaint**

6 On February 26, 2009, Held, who was and is acting in the interest of the general public in  
7 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the  
8 County of Solano against Golf Gifts, and Does 1 through 150, alleging violations of Health &  
9 Safety Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl  
10 bags manufactured distributed and/or sold by Golf Gifts.

11 **1.8 No Admission**

12 Golf Gifts denies the material factual and legal allegations contained in Held’s Notice and  
13 maintains that all products that it has sold and distributed in California, including the Products,  
14 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be  
15 construed as an admission by Golf Gifts of any fact, finding, issue of law, or violation of law, nor  
16 shall compliance with this Consent Judgment constitute or be construed as an admission by Golf  
17 Gifts of any fact, finding, conclusion, issue of law or violation of law, such being specifically  
18 denied by Golf Gifts. However, this section shall not diminish or otherwise affect the  
19 obligations, responsibilities and duties of Golf Gifts under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
22 jurisdiction over Golf Gifts as to the allegations contained in the Complaint, that venue is proper  
23 in the County of Solano and that this Court has jurisdiction to enter and enforce the provisions of  
24 this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 1,  
27 2009.

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1     **2.     INJUNCTIVE RELIEF: REFORMULATION**

2             **2.1     Reformulation Commitments and Schedule**

3             Except as otherwise provided for in this Agreement, as of the Effective Date, Golf Gifts  
4 shall only manufacture and/or distribute Products for sale in California that are Phthalate Free, as  
5 set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean  
6 Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP when  
7 analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A  
8 and 8270C, or equivalent methods as may be allowed by any state or federal agency.

9     **3.     MONETARY PAYMENTS**

10            **3.1     Payments Pursuant to Health & Safety Code § 25249.7(b)**

11            In settlement of all the claims referred to in this Consent Judgment against it, Golf Gifts  
12 shall pay \$1,500 in civil penalties to be apportioned in accordance with California Health &  
13 Safety Code §25192, with 75% of these funds remitted to the State of California's Office of  
14 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held  
15 as provided by California Health & Safety Code §25249.12(d). Golf Gifts shall issue two  
16 separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in  
17 Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA)  
18 in the amount of \$1,125, representing 75% of the total penalty, and (b) one check to Hirst &  
19 Chanler LLP in Trust for Held in the amount of \$375, representing 25% of the total penalty. Two  
20 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,  
21 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be  
22 furnished, upon request, five calendar days before payment is due. The payments shall be  
23 delivered on or before November 21, 2009, at the following address:

24                   Hirst & Chanler LLP  
25                   Attn: Proposition 65 Controller  
26                   2560 Ninth Street  
27                   Parker Plaza, Suite 214  
28                   Berkeley, CA 94710

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

2             **4.1     Attorney Fees and Costs**

3             The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
4     reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
5     issue to be resolved after the material terms of the agreement had been settled. After the other  
6     settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the  
7     compensation due to Held and his counsel under general contract principles and the private  
8     attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all  
9     work performed through the mutual execution of this agreement. Golf Gifts shall reimburse Held  
10    and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Golf  
11    Gifts's attention, and litigating and negotiating a settlement in the public interest. Golf Gifts shall  
12    pay Held and his counsel \$20,000 for fees and costs incurred as a result of investigating, bringing  
13    this matter to Golf Gifts's attention, and litigating and negotiating a settlement in the public  
14    interest. Golf Gifts shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall  
15    make the check payable to "Hirst & Chanler LLP" and shall be delivered on or before November  
16    21, 2009, to the following:

17             Hirst & Chanler LLP  
18             Attn: Proposition 65 Controller  
19             2560 Ninth Street  
              Parker Plaza, Suite 214  
              Berkeley, CA 94710

20     **5.     RELEASE OF ALL CLAIMS**

21             **5.1     Release of Golf Gifts and Downstream Customers**

22             In further consideration of the promises and agreements herein contained, and for the  
23    payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and  
24    current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
25    general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
26    form of legal action and releases all claims, including, without limitation, all actions, and causes  
27    of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
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1 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
2 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
3 (collectively "Claims"), that were brought or could have been brought against Golf Gifts and its  
4 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
5 shareholders, agents, employees, and sister and parent entities and each of Golf Gifts downstream  
6 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,  
7 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and  
8 their respective officers, directors, attorneys, representatives, shareholders, agents, employees and  
9 sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any other  
10 statutory or common law Claims that could have been asserted including such Claims as relate to  
11 Golf Gifts and each of its Releasees alleged failure to warn about exposures to or identification of  
12 the Listed Chemical contained in the Products.

13 **5.2 Golf Gifts Release of Held**

14 Golf Gifts waives any and all claims against Held, his attorneys and other representatives,  
15 for any and all actions taken or statements made (or those that could have been taken or made) by  
16 Held and his attorneys and other representatives, whether in the course of investigating claims or  
17 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to  
18 the Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
22 year after it has been fully executed by all parties, in which event any monies that have been  
23 provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded  
24 within fifteen (15) days after receiving written notice from Golf Gifts that the one-year period  
25 has expired.

26 **7. SEVERABILITY**

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

3 **8. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California and apply within the State of California. In the event that Proposition 65 is repealed or  
6 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the  
7 Products, then Golf Gifts shall provide written notice to Held of any asserted change in the law,  
8 and shall have no further obligations pursuant to this consent judgment with respect to, and to the  
9 extent that, the Products are so affected.

10 **9. NOTICES**

11 Unless specified herein, all correspondence and notices required to be provided pursuant  
12 to 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 Golf Gifts:**

16 Ron Marks  
17 Golf Gifts and Gallery, Inc.  
18 N. 1675 Powers Lake Road  
19 Powers Lake, WI 53159

19 **To Held:**

20 Proposition 65 Coordinator  
21 Hirst & Chanler, LLP  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

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

27 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

28 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
shall be deemed an original, and all of which, when taken together, shall constitute one and the

1 same documents.

2 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

5 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

6 The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed  
7 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
8 obtaining such approval, Held, Golf Gifts and their respective counsel agree to mutually employ  
9 their best efforts to support the entry of this agreement as a Consent Judgment and obtain  
10 approval of the Consent Judgment by the Court in a timely manner. For purposes of this  
11 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any  
12 papers, asserting any oral argument in support of the required motion for judicial approval, and  
13 defending any appellate review of the Court's approval.

14 **13. MODIFICATION**

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

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**14. AUTHORIZATION**

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.

**AGREED TO:**

**APPROVED**  
By Anthony Held at 2:11 pm, Oct 22, 2009

**AGREED TO:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Anthony E Held*  
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: \_\_\_\_\_

Defendant, GOLF GIFTS AND GALLERY, INC.

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**14. AUTHORIZATION**

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.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**

Date: October 23, 2009

By: Bon Mark - Agent  
Defendant, GOLF GIFTS AND GALLERY, INC.