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Clifford A. Chanler, State Bar No. 135534  
Daniel Bornstein, State Bar No. 181711  
HIRST & CHANLER LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
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**FILED**  
San Francisco County Superior Court

OCT 14 2009

GORDON PARK-LI, Clerk  
BY: Judith C. Ragan  
Deputy Clerk

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

THE HADDAD APPAREL GROUP, LTD.;  
*et al.*,

Defendants.

*For*

Case No. CGC-09-488635

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

Date: September 21, 2009  
Time: 9:30 A.M.  
Dept.: 301  
Judge: Hon. Peter Busch

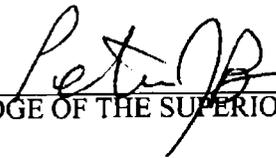
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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant THE HADDAD APPAREL GROUP, LTD., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Stipulation and [Proposed] Order 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 September 21, 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 Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

**IT IS SO ORDERED.**

Dated: 10/14/09

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
**PETER J. BUSCH**

# **EXHIBIT 1**

1 Clifford A. Chanler (State Bar No. 135534)  
2 Daniel Bornstein (State Bar No. 181711)  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 858-8880  
8 Facsimile: (510) 848-8118

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

11 Malcolm C. Weiss (State Bar No. 112476)  
12 Catherine Allen (State Bar No. 211574)  
13 Ian M. Forrest (State Bar No. 240403)  
14 HUNTON & WILLIAMS LLP  
15 550 South Hope Street, Suite 2000  
16 Los Angeles, CA 90071  
17 Telephone: (213) 532-2178  
18 Facsimile: (213) 532-2000

19 Attorneys for Defendant  
20 THE HADDAD APPAREL GROUP, LTD.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 IN AND FOR THE CITY COUNTY OF SAN FRANCISCO

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

24 Plaintiff,

25 v.

26 THE HADDAD APPAREL GROUP, LTD.; *et*  
27 *al.*

28 Defendants.

Case No. CGC-09-488635

STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E., and The Haddad Apparel Group, Ltd.**

3             This Stipulation and Proposed Consent Judgment (“Consent Judgment”) is entered into by  
4     and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and defendant The  
5     Haddad Apparel Group, Ltd. (“Defendant”), with Plaintiff Held and Defendant collectively referred  
6     to herein as the “Parties” and individually as a “Party.”

7             **1.2 Plaintiff**

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

11            **1.3 Defendant**

12            Defendant employs ten or more persons and is a person in the course of doing business for  
13    purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
14    Safety Code § 25249.5, *et seq.* (“Proposition 65”).

15            **1.4 General Allegations**

16            Dr. Held alleges that Defendant has manufactured, distributed and/or sold children’s PVC  
17    jackets containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without  
18    Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause  
19    cancer and birth defects and other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as follows: children’s  
22    PVC jackets containing DEHP including, but not limited to, *Harley-Davidson Jacket Style 737429*  
23    (*#6 33716 14710 5*). All such products containing DEHP are referred to hereinafter as the  
24    “Products.”

25            **1.6 Notices of Violation**

26            Dr. Held asserts that on January 26, 2009, he served Defendant, the Office of the California  
27    Attorney General, all California counties’ District Attorneys and all City Attorneys of California  
28    cities with populations exceeding 750,000, (collectively “Public Enforcers”) with a document

1 entitled "60-Day Notice of Violation" (the "Notice") that provided Defendant and Public Enforcers  
2 with notice of alleged violations of Proposition 65 for alleged failure to warn consumers that  
3 children's PVC jackets containing DEHP that Defendant sold allegedly exposed users in California  
4 to DEHP. To the best of Parties' knowledge, no Public Enforcer has diligently prosecuted any of  
5 the allegations set forth in the Notice.

6 **1.7 Complaint**

7 On May 22, 2009, Dr. Held, who was and is acting in the interest of the general public in  
8 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the City  
9 and County of San Francisco against Defendant and Does 1 through 150, alleging violations of  
10 Proposition 65 based on the allegations in the Notice.

11 **1.8 No Admission**

12 Defendant denies the material, factual and legal allegations contained in Dr. Held's Notice  
13 of Violation and Complaint and denies that any Products that it has sold and distributed in  
14 California do not comply with Proposition 65 or any other law. Nothing in this Consent Judgment  
15 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
16 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by  
17 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
18 denied by Defendant. In order to avoid the costs and expense of litigation and without admitting  
19 liability or wrongdoing, Defendant has elected to resolve this matter by settlement and on the terms  
20 set forth herein. However, this section shall not diminish or otherwise affect Defendant's  
21 obligations, responsibilities, and duties 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 Defendant as to the allegations contained in the Complaint, that venue is proper in  
25 the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce this  
26 Consent Judgment as a full and final binding resolution of all claims which were or could have been  
27 raised in the Complaint against Defendant based on the facts alleged therein and in the Notice.

28

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31, 2009.

3           **2. INJUNCTIVE RELIEF: REFORMULATION IF THE PRODUCT**  
4           **IS RE-INTRODUCED FOR SALE IN CALIFORNIA**

5           As a result of the Notice, Defendant represents that it has no plans to re-introduce the  
6           Products for sale into California. Defendant agrees that if it does re-introduce the Products for sale  
7           into California, it will not do so unless such Products contain less than 1,000 (one thousand) parts  
8           per million ("ppm") of DEHP when analyzed pursuant to: Environmental Protection Agency  
9           ("EPA") testing methodologies 3580A and 8270C, or other comparable methodologies recognized  
10          and accepted by one or more federal and/or state agencies, including the Consumer Product Safety  
11          Commission. This reformulation requirement shall not apply to any Products manufactured by  
12          Defendant prior to the Effective Date.

13          **3. MONETARY PAYMENTS**

14           **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

15           3.1.1 In settlement of all claims related to the Products and Listed Chemical  
16           referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code  
17           § 25249.7(b), Defendant shall pay \$2,000 in civil penalties.

18           3.1.2 Civil penalties are to be apportioned in accordance with California Health &  
19           Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of  
20           Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
21           remitted to Anthony Held as provided by California Health & Safety Code § 25249.12(d).

22           Defendant shall issue two separate checks for the penalty payment: (a) one check made  
23           payable to "Hirst & Chanler LLP in Trust for OEHHA" in the amount of \$1,500, representing 75%  
24           of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the  
25           amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the  
26           above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)  
27           Anthony Held, whose information shall be provided five calendar days before the payment is due.  
28

1                   3.1.3 Payment Timing. Not later than five (5) days following the execution of this  
2 Consent Judgment by both parties, the penalty payment shall be made by Defendant to either Hirst  
3 & Chanler or Hunton & Williams, at the sole election of Defendant, to be held in a client Trust  
4 Account. If the penalty payment is made to Hunton & Williams, Hunton & Williams shall provide  
5 written notice to Hirst & Chanler, within 2 business days of the receipt of the penalty payment.  
6 Such penalty payment shall remain in the Trust Account until this Consent Judgment has been  
7 entered by the Court.

8                   If the penalty payment is held by Hirst & Chanler, it may be disbursed upon entry of  
9 this Consent Judgment and, if the penalty payment is held by Hunton & Williams, it shall be  
10 delivered to the following address within five days of entry of this Consent Judgment:

11                   Hirst & Chanler LLP  
12                   Attn: Proposition 65 Controller  
13                   2560 Ninth Street  
14                   Parker Plaza, Suite 214  
15                   Berkeley, CA 94710

16                   4           **REIMBURSEMENT OF FEES AND COSTS**

17                   4.1       **Attorney Fees and Costs**

18                   The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
20 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant  
21 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
22 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
23 Dr. Held and his counsel under general contract principles and the private attorney general doctrine  
24 codified at California Code of Civil Procedure Section § 1021.5. Defendant shall reimburse Dr.  
25 Held and his counsel a total of \$22,000 for fees and costs incurred as a result of investigating,  
26 litigating and negotiating a settlement in the public interest. Defendant shall issue a separate 1099  
27 for fees and costs to "Hirst & Chanler LLP" (EIN: 20-3929984). Not later than five (5) days  
28 following the execution of this Consent Judgment by both parties, the fee and cost payment shall be  
made by Defendant to either Hirst & Chanler or Hunton & Williams to be held in a client Trust  
Account. If the fee and cost payment is made to Hunton & Williams, Hunton & Williams shall

1 provide written notice to Hirst & Chanler, within 2 business days of the receipt of the fee and cost  
2 payment. Such fee and cost payment shall remain in the Trust Account until this Consent Judgment  
3 has been entered by the Court.

4 Subject to the provisions below, if the fee and cost payment is held by Hirst & Chanler, it  
5 may be disbursed upon entry of this Consent Judgment and, if the fee and cost payment is held by  
6 Hunton & Williams, it shall be delivered to the following address within five (5) days of entry of  
7 this Consent Judgment:

8 Hirst & Chanler LLP  
9 Attn: Proposition 65 Controller  
10 2560 Ninth Street  
11 Parker Plaza, Suite 214  
12 Berkeley, CA 94710

13 The foregoing notwithstanding, should the Court enter the Consent Judgment over an  
14 objection, the payments made into a Trust Account required under Sections 3 and 4 shall be paid  
15 within five (5) days after the Judgment becomes final, including any appeal. However, should the  
16 Parties revise the Consent Judgment prior to its entry by the Court in response to an objection such  
17 that the objection is withdrawn prior to entry of the Consent Judgment, the timing of the payments  
18 shall be due as if no objection has been filed.

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Dr. Held's Release of Defendant**

21 In further consideration of the promises and agreements herein contained, and for the  
22 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current  
23 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general  
24 public only as to the Products, hereby waives all rights to institute or participate in, directly or  
25 indirectly, any form of legal action and releases all claims including, without limitation, all actions,  
26 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
27 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
28 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
(collectively "Claims"), that were brought or could have been brought against Defendant or its  
parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers

1 (including Burlington Coat Factory), licensors, licensees, or any other person in the course of doing  
2 business, and the successors and assigns of any of them, who may use, maintain, manufacture,  
3 distribute, advertise, market or sell Products, and the officers, directors, managers, employees,  
4 members, shareholders, agents, insurers and representatives of each of them (collectively "Defendant  
5 Releasees") in this Action. This release is limited to, but is intended to be a full, final, and binding  
6 resolution of, those Claims that arise from or relate to facts alleged in the Notice and the Complaint,  
7 as against Defendant and Defendant Releasees, concerning Defendant's alleged failure to warn about  
8 exposures to DEHP contained in the Products.

9 Dr. Held also, on behalf of himself, his past and current agents, representatives, attorneys,  
10 successors, and/or assignees, and in his individual capacity only, provides a general release herein  
11 which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Dr. Held  
12 against Defendant and Defendant Releasees of any nature, character or kind, known or unknown,  
13 suspected or unsuspected, arising under Proposition 65 or an alleged failure to provide warnings for  
14 exposures to DEHP from the Products manufactured, distributed or sold by Defendant. Dr. Held  
15 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as  
16 follows:

17 A general release does not extend to claims which the creditor does  
18 not know or suspect to exist in his favor at the time of executing  
19 the release, which if known by him must have materially affected  
his settlement with the debtor.

20 Dr. Held, in his individual capacity only, expressly waives and relinquishes any and all  
21 rights and benefits which he may have under, or which may be conferred on him by the provisions  
22 of Section 1542 of the California Civil Code as well as under any other state or federal statute or  
23 common law principle of similar effect, to the fullest extent that he may lawfully waive such rights  
24 or benefits pertaining to the released matters. In furtherance of such intention, the release hereby  
25 given shall be and remain in effect as a full and complete release notwithstanding the discovery or  
26 existence of any such additional or different claims or facts arising out of the released matters.

27 Notwithstanding the foregoing, this release shall not limit or affect Dr. Held's right to  
28 enforce the terms of the Consent Judgment.

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**5.2 Effect of Consent Judgment**

Compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant and Defendant Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by Defendant.

**5.3 Defendant's Release of Dr. Held**

Defendant waives any and all Claims against Dr. Held, his attorneys, and other 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 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products. Defendant provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all released Claims described herein that it may have against Dr. Held, of any nature, character or kind, known or unknown, and suspected or unsuspected. Defendant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Defendant expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

1 Notwithstanding the foregoing, this release shall not limit or affect Defendant's right to  
2 enforce the terms of this Consent Judgment.

3  
4 **6. COURT APPROVAL**

5 Notwithstanding Section 1.10, this Consent Judgment is not effective until it is approved and  
6 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by  
7 the Court within one year after it has been fully executed by all Parties. If the Court does not  
8 approve the Consent Judgment, the Parties shall meet and confer as to (and jointly agree on)  
9 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course  
10 of action to take, then the case shall proceed in its normal course on the trial court's calendar, and  
11 any monies that have been provided to Plaintiff, or his counsel, pursuant to Section 3 and/or Section  
12 4 above, shall be refunded within thirty (30) days of Defendant providing written notice thereof. In  
13 the event that this Consent Judgment is entered by the Court and subsequently overturned by any  
14 appellate court, any monies that have been provided to Plaintiff, or his counsel pursuant to Section 3  
15 and/or Section 4 above, shall be refunded within fifteen (15) days of the appellate decision  
16 becoming final. If the Court's approval is ultimately overturned by an appellate court, the Parties  
17 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent  
18 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall  
19 proceed in its normal course on the trial court's calendar.

20 **7. SEVERABILITY**

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

24 **8. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the  
26 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
27 negotiations, commitments, and understandings related hereto. No representations, oral or  
28 otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
2 to exist or to bind any of the Parties.

3  
4 9. **GOVERNING LAW**

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

10 10. **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 Defendant:

16 Malcolm C. Weiss  
17 Catherine Allen  
18 Ian M. Forrest  
19 HUNTON & WILLIAMS LLP  
20 550 South Hope Street, Suite 2000  
21 Los Angeles, CA 90071

22 To Dr. Held:

23 Proposition 65 Controller  
24 HIRST & CHANLER LLP  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710-2565

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

1    **11.    COUNTERPARTS; FACSIMILE SIGNATURES**

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

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7    **12.    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   **13.    ADDITIONAL POST EXECUTION ACTIVITIES**

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

17   **14.    MODIFICATION AND ENFORCEMENT**

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 of  
20 any Party and entry of a modified consent judgment by the Court. In the event that, after the  
21 Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions of  
22 this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the  
23 prevailing Party shall be entitled to reasonable attorneys' fees and costs.

24   **15.    EFFECT OF CONSENT JUDGMENT**

25           This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the  
26 Parties and their respective successors and assigns.

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16. **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:

AGREED TO:

**APPROVED**

By Anthony E Held at 10:54 am, 7/20/09

Date:

Date:

7/24/09

By:

*Anthony E Held*

By:

*Marc Weintraub*

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

Marc Weintraub, Chief Executive Officer  
THE HADDAD APPAREL GROUP,  
LTD.

**IT IS SO ORDERED.**

Date:

JUDGE OF THE SUPERIOR COURT