

1 Clifford A. Chanler, State Bar No. 135534  
2 David Lavine, State Bar No. 166744  
3 THE CHANLER GROUP  
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.

**FILED**  
OCT - 6 2010  
KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: K. Main, Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION  
15

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

17 Plaintiff,

18 v.

19 ALPARGATAS USA, INC., *et al.*,

20 Defendants.

Case No. CIV1003019

**~~PROPOSED~~ JUDGMENT PURSUANT  
TO TERMS OF CONSENT JUDGMENT**

Date: September 8, 2010

Time: 8:30 a.m.

Dept.: E


Judge: Hon. Judge Ritchie

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant  
2 ALPARGATAS USA, INC., having agreed through their respective counsel that judgment be  
3 entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a  
4 [Proposed] Consent Judgment (“Consent Judgment”) entered into by the parties, and following  
5 issuance of an order approving this Proposition 65 settlement agreement and entering the  
6 Consent Judgment on September 8, 2010.

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

10 **IT IS SO ORDERED.**

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12 Dated: 10/14/10

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JUDGE OF THE SUPERIOR COURT

# Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534  
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4 2560 Ninth Street  
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9 Attorneys for Plaintiff  
10 ANTHONY E. HELD, Ph.D., P.E.

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

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

15 Plaintiff,

16 v.

17 ALPARGATAS USA, INC., and DOES 1-150,  
18 inclusive,

19 Defendants.

Case No. CIV 1003019

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1       **1. INTRODUCTION**

2               **1.1 Anthony E. Held, Ph.D., P.E., Alpargatas USA, Inc.**

3               This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (hereinafter “Dr. Held”) and Alpargatas USA, Inc., which does business as Havaianas (“Alpargatas”).  
5 Dr. Held and Alpargatas are collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

7               Dr. 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 Alpargatas**

11              Alpargatas 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 & Safety  
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14              **1.4 General Allegations**

15              Dr. Held alleges that Alpargatas has sold in the State of California footwear containing di(2-  
16 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic  
17 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”), as  
18 a chemical known to the State of California to cause birth defects and other reproductive harm.  
19 DEHP is 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 follows: all footwear,  
22 specifically shoes and sandals containing the Listed Chemical, including, but not limited to,  
23 *Havaianas Baby Brazil Light Green (#7 41940 24645 4)*. All such items marketed or sold by  
24 Alpargatas shall be referred to herein as the “Products.”

25              **1.6 Notice of Violation**

26              On February 12, 2010, Dr. Held served Alpargatas and the required public enforcement  
27 agencies with a document entitled “60-Day Notice of Violation” that provided Alpargatas and such  
28 public enforcers with notice that alleged that Alpargatas was in violation of California Health &

1 Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users  
2 in California to DEHP.

3 **1.7 Complaint**

4 On June 9, 2010, Dr. Held, who was and is acting in the interest of the general public in  
5 California, filed a complaint in the Marin County Superior Court, naming Alpargatas as a defendant  
6 and alleging violations of Health & Safety Code § 25249.6 by Alpargatas based on the alleged  
7 exposures to DEHP contained in the Products offered for sale in California by Alpargatas.

8 **1.8 No Admission**

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

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
19 jurisdiction over Alpargatas as to the allegations contained in the Complaint, that venue is proper in  
20 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this  
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 15, 2010.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulation Commitment and Product Warnings**

26 Commencing 90 days from the Effective Date, Alpargatas shall not manufacture or cause to  
27 be manufactured for sale in California any Products unless such Products comply with the  
28 reformulation standards set forth in Section 2.2. In the interim, Alpargatas has begun providing, and

1 shall continue to provide, the clear and reasonable warnings set forth in subsections 2.1(a) and (b),  
2 unless exempt from doing so pursuant to Section 2.2.

3 For the interim period when warnings are utilized, each warning shall be prominently placed  
4 with such conspicuousness as compared with other words, statements, designs, or devices as to render  
5 it likely to be read and understood by an ordinary individual under customary conditions before  
6 purchase or use. Each warning shall be provided in a manner such that the consumer or user  
7 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer  
8 confusion.

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

10 (i) **Product Labeling.** Alpargatas may affix a warning to the packaging,  
11 labeling, or directly on each Product sold in retail outlets in California by Alpargatas or any person  
12 selling its Products, that states:

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

16 (ii) **Point-of-Sale Warnings.** Alternatively, Alpargatas may provide  
17 warning signs in the form below to its customers in California with instructions to post the  
18 warnings in close proximity to the point of display of the Products.

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

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

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

[list products for which warning is required]

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

1                   **(b) Mail Order Catalog and Internet Sales.** In the event that Alpargatas sells  
2 Products via mail order catalog or internet to customers located in California after the Effective Date  
3 that are not Reformulated Products, Alpargatas shall provide a warning for Products sold via mail  
4 order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the  
5 website. Warnings given in the mail order catalog or on the website shall identify the specific  
6 Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

7                   **(i) Mail Order Catalog Warning.** Any warning provided in a mail order  
8 catalog must be in the same type size or larger than the Product description text within the catalog.  
9 The following warning shall be provided on the same page and in the same location as the display  
10 and/or description of the Product:

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

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

18                           **WARNING:** Certain products identified with this symbol  
19   ▼ and offered for sale in this catalog contain  
20   DEHP, a phthalate chemical known to the  
   State of California to cause birth defects and  
   other reproductive harm.

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

25                   If Alpargatas elects to provide warnings in the mail order catalog, then the warnings must be  
26 included in all catalogs offering to sell one or more Products printed after the Effective Date.

27                   **(ii) Internet Website Warning.** A warning may be given in conjunction  
28 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on



1 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the  
2 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser  
3 during the checkout process. The following warning statement shall be used and shall appear in any  
4 of the above instances adjacent to or immediately following the display, description, or price of the  
5 Product for which it is given in the same type size or larger than the Product description text:

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

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

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

## 17                   **2.2    Exceptions To Warning Requirements**

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

19                                   **(i)**     Any Products manufactured or caused to be manufactured by  
20                   Alpargatas or sold by Alpargatas or Saks Incorporated or Saks & Company (including their  
21                   respective affiliates) (collectively "Saks"), or shipped by Alpargatas to any third party (including but  
22                   not limited to Saks) for distribution or retail sale, prior to the Effective Date; or

23                                   **(ii)**    Reformulated Products, defined as those Products containing less than  
24                   or equal to 1,000 parts per million ("ppm") of the Listed Chemical when analyzed pursuant to  
25                   Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.  
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1     **3.     MONETARY PAYMENTS**

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

3             In settlement of all claims related to the Products and Listed Chemical referred to in the  
4     Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Alpargatas  
5     shall pay \$59,000 in civil penalties.

6             Civil penalties are to be apportioned in accordance with California Health & Safety Code  
7     § 25192, with 75% of these funds remitted to the State of California's Office of Environmental  
8     Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony  
9     Held as provided by California Health & Safety Code § 25249.12(d). Alpargatas shall issue two  
10    separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in  
11    Trust for OEHHA" in the amount of \$44,250, representing 75% of the total penalty; and (b) one  
12    check to "The Chanler Group in Trust for Anthony Held" in the amount of \$14,750, representing  
13    25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA,  
14    P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose  
15    information shall be provided five calendar days before the payment is due.

16            Payment shall be delivered to Dr. Held's counsel on or before the Effective Date, at the  
17    following address:

18            The Chanler Group  
19            Attn: Proposition 65 Controller  
20            2560 Ninth Street  
21            Parker Plaza, Suite 214  
22            Berkeley, CA 94710

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

24            **4.1     Attorney Fees and Costs**

25            The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
26    reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
27    issue to be resolved after the material terms of the agreement had been settled. Alpargatas then  
28    expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
29    finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.  
30    Held and his counsel under general contract principles and the private attorney general doctrine

1 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the  
2 mutual execution of this agreement. Alpargatas, on behalf of itself and those in its chain of  
3 distribution, shall reimburse Dr. Held and his counsel a total of \$40,000 for fees and costs incurred  
4 as a result of investigating, bringing this matter to Alpargatas' attention, and litigating and negotiating  
5 a settlement in the public interest. Alpargatas shall issue a separate 1099 for fees and costs (EIN: 94-  
6 3171522) and shall make the check payable to "The Chanler Group" and shall be delivered on or  
7 before the Effective Date.

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

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Dr. Held's Release of Alpargatas**

15 In further consideration of the promises and agreements herein contained, and for the  
16 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and  
17 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
18 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
19 legal action and releases all claims, including, without limitation, all actions, and causes of action, in  
20 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or  
21 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any  
22 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
23 Alpargatas and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,  
24 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate  
25 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
26 shareholders, agents, and employees, and sister, affiliated and parent entities (collectively  
27 "Releasees"). Without limiting the foregoing, Dr. Held expressly releases all Claims against Saks (as  
28 defined in paragraph 2.2 above), including all affiliates who procured, marketed, distributed, offered  
for sale or sold the Products. The releases in this Consent Judgment are limited to those claims that

1 arise under Proposition 65, as such claims relate to Alpargatas' or any Releasee's alleged failure to  
2 warn about exposures to or identification of DEHP contained in the Products.

3 **5.2 Alpargatas' Release of Dr. Held**

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

9 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California  
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is  
22 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Alpargatas  
23 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
25 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Alpargatas from any  
26 obligation to comply with any applicable state or federal toxics control laws other than Proposition  
27 65. Compliance with this Consent Judgment by Alpargatas shall constitute compliance with  
28 Proposition 65 for the Products with respect to the Listed Chemical.

1 **9. NOTICES**

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

6 For Alpargatas:

7 Matthew P. Lewis  
8 White & Case LLP  
9 633 W. 5th Street, 19th Floor  
Los Angeles, CA 90071  
213-620-7700

AND

Afonso Sugiyama  
Alpargatas USA  
131 Spring Street, Suite 201E  
New York, New York 10012

10 For Dr. Held:

11 Proposition 65 Coordinator  
12 The Chanler Group  
13 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

23 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

24 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion  
25 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such  
26 approval, Dr. Held and Alpargatas and their respective counsel agree to mutually employ their best  
27 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the  
28

1 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
2 include, at a minimum, cooperating on the drafting and filing of any papers in support of the required  
3 motion for judicial approval.

4 **13. MODIFICATION**

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

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
10 parties and have read, understood, and agree to all of the terms and conditions hereof.

11 **AGREED TO:** **APPROVED**  
12 *By Tony Held at 0:11 am, Jun 09, 2010*  
13 Date: \_\_\_\_\_

**AGREED TO:**  
Date: 06/08/2010

14 By: *Anthony E. Held*  
15 ANTHONY E. HELD, Ph.D., P.E.

By: *Afonso Sugiyama*  
Afonso Sugiyama, President  
ALPARGATAS USA, INC.

16 **IT IS SO ORDERED.**

17  
18 Date: \_\_\_\_\_

19 \_\_\_\_\_  
20 JUDGE OF THE SUPERIOR COURT  
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