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11 Attorneys for Plaintiff  
12 ANTHONY E. HELD, PhD., P.E.

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 MARIN COUNTY

16 UNLIMITED CIVIL JURISDICTION

17 ANTHONY E. HELD, PhD., P.E.,

18 Plaintiff,

19 v.

20 ALPHA GARMENT, INC.; and DOES 1-150,  
21 inclusive,

22 Defendants.

Case No. CIV1103511

**[PROPOSED] JUDGMENT PURSUANT TO  
TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT**

Date: August 15, 2012

Time: 8:30 a.m.

Dept.: B

Judge: Hon. Roy O. Chernus

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

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

Plaintiff,

v.

ALPHA GARMENT, INC.; and DOES 1-  
150, inclusive,

Defendants.

Case No. CIV1103511

**[PROPOSED] CONSENT  
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Dr. Held alleges that Alpha employs ten or more persons and is a person in the course of  
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Alpha has manufactured, distributed, and/or offered for sale in  
16 California belts containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65  
17 warnings. DEHP is listed pursuant to Proposition 65 as chemical known to the State of California  
18 to cause birth defects and other reproductive harm (hereinafter the “Listed Chemical”).

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are belts containing the Listed  
21 Chemical sold or distributed for sale in California by Alpha, including, but not limited to, the *Zana*  
22 *Di Jeans Rockin Denim Pants with Belt, Style JJ9317RS4* (#8 83326 38295 7). Alpha’s belts  
23 containing DEHP in excess of the DEHP Standard (as defined below) are referred to hereinafter as  
24 the “Products.”

25 **1.6 Notice of Violation**

26 On or about April 19, 2011, Dr. Held served Alpha and various public enforcement agencies  
27 with a document entitled 60-Day Notice of Violation (“Notice”) that provided Alpha and such  
28

1 public enforcers with notice of Dr. Held's allegation that Alpha was in violation of Proposition 65  
2 for failing to warn consumers and customers in California that its belts exposed users to DEHP.

### 3 **1.7 Complaint**

4 On July 15, 2011, Dr. Held filed a complaint in the Marin County Superior Court  
5 ("Complaint"), naming Alpha as a defendant and alleging violations of Proposition 65 based on the  
6 allegations in the Notice.

### 7 **1.8 No Admission**

8 Nothing in this Consent Judgment shall be construed as an admission by Alpha of any fact,  
9 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent  
10 Judgment constitute or be construed as an admission by Alpha of any fact, finding, conclusion,  
11 issue of law, or violation of law, such being specifically denied by Alpha. However, this Section  
12 shall not diminish or otherwise affect Alpha's obligations, responsibilities and duties under this  
13 Consent Judgment.

### 14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that the Court has  
16 jurisdiction over Alpha as to the allegations contained in the Complaint, that venue is proper in the  
17 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this  
18 Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and binding  
19 resolution of all claims which were or could have been raised in the Complaint against Alpha based  
20 on the facts alleged therein and in the Notice.

### 21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean May 31, 2012.

## 23 **2. INJUNCTIVE RELIEF**

### 24 **2.1 Reformulation Standards**

25 As of the Effective Date, Alpha shall only ship, sell, or offer to ship for sale in California  
26 "Reformulated Products". For purposes of this Consent Judgment "Reformulated Products" shall  
27 mean any Product containing a maximum DEHP concentration of 1,000 parts per million (the "DEHP  
28 Standard") in each accessible component when analyzed pursuant to U.S. Environmental Protection

1 Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or  
2 state agencies for the purpose of determining DEHP content in a solid substance; provided, however,  
3 that shipment, sale or offering for sale in California on or before the Effective Date by Alpha or its  
4 customers of Products, which are on the date hereof, (i) in inventory, (ii) in production or (iii) on  
5 route, shall not constitute a violation of this Consent Judgment.

6 However, Alpha may ship, sell or offer to ship for sale in California a Product that does not  
7 meet the DEHP Standard, if the following conditions are met: (i) Alpha has determined that no  
8 Reformulated Product or equivalent DEHP-free substitute product is “reasonably commercially  
9 available”; (ii) the Product is not primarily intended for use by individuals twelve years of age or  
10 younger; and (iii) Alpha complies with the warning requirements set forth in Section 2.2 below. For  
11 purposes of this Section 2.1 “reasonable commercial availability” shall include consideration of the  
12 following factors: availability and supply of a Reformulated Product or equivalent DEHP-free  
13 product; cost of the Reformulated Product or equivalent DEHP-free product; performance  
14 characteristics of the Reformulated Product or equivalent DEHP-free product, including but not  
15 limited to performance, safety, and stability.

## 16 **2.2 Product Warnings**

17 Commencing on the Effective Date, Alpha shall, for all Products sold in California that do not  
18 meet the DEHP Standard, provided the conditions in Section 2.1 are met, provide clear and  
19 reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently  
20 placed with such conspicuousness as compared with other words, statements, designs, or devices as  
21 to render it likely to be read and understood by an ordinary individual under customary conditions  
22 before purchase or use. Each warning shall be provided in a manner such that the consumer or user  
23 understands to which specific Product the warning applies, so as to minimize the risk of consumer  
24 confusion.

### 25 **(a) Retail Store Sales**

26 (i) Product Labeling. Alpha shall affix a warning to the packaging,  
27 labeling, or directly on each Product sold in retail outlets in California by Alpha or any person selling  
28 the Products, that states:

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

5                   (ii)     Point-of-Sale Warnings. Alternatively, Alpha may provide warning  
6                   signs in the form below to its customers in California with instructions to post the warnings in close  
7                   proximity to the point of display of the Products. Such instruction sent to Alpha's customers shall  
8                   be sent by certified mail.

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

13               Where more than one Product is sold in proximity to other like items or to those that do not  
14               require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement  
15               must be used:<sup>1</sup>

16               WARNING: The following products contain DEHP, and  
17               phthalate, and other chemicals known to the  
18               State of California to cause birth defects and  
19               other reproductive harm:

20                               *[list products for which warning is required]*

21               (b)     **Mail Order Catalog and Internet Sales**

22               In the event that Alpha sells Products via mail order catalog and/or the internet, to  
23               customers located in California, after the Effective Date, and that are not Reformulated Products,  
24               Alpha shall provide a warning for such Products sold via mail order catalog or the internet to  
25               California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail  
26               order catalog or on the internet shall identify the *specific* Product to which the warning applies as  
27               further specified in Sections 2.2(b)(i) and (ii).

28               (i)     **Mail Order Catalog Warning**

                 Any warning provided in a mail order catalog of the Alpha must be in the same  
type size or larger than the Product description text within the catalog. The following warning shall

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<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 be provided on the same page and in the same location as the display and/or description of the  
2 Product:

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

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

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

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

21                       (ii)    **Internet Website Warning**

22           A warning may be given in conjunction with the sale of the Products by Alpha  
23 via the internet, when the sale is to a consumer in California, provided it appears either: (a) on the  
24 same web page on which a Product is displayed; (b) on the same web page as the order form for a  
25 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
26 displayed to a purchaser during the checkout process. The following warning statement shall be used  
27 and shall appear in any of the above instances adjacent to or immediately following the display,  
28 description, or price of the Product for which it is given in the same type size or larger than the  
Product description text:

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

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

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

### 13                  3.       **MONETARY PAYMENTS**

#### 14                  3.1       **Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15                  On or before the Effective Date, Alpha shall make a payment of \$6,500 to be apportioned in  
16                  accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds  
17                  earmarked for the State of California's Office of Environmental Health Hazard Assessment  
18                  ("OEHHA") and the remaining 25% of these penalty monies earmarked for Dr. Held.

#### 19                  3.2       **Final Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

20                  On or before December 31, 2012, Alpha shall pay a final civil penalty of \$13,000. As an  
21                  incentive to offer only Products that comply with the DEHP standard established by Section 2 in  
22                  advance of that time, however, Dr. Held agrees that the final civil penalty shall be waived in its  
23                  entirety if, on or before December 1, 2012, an officer of Alpha certifies in writing to Dr. Held's  
24                  counsel that, as of December 31, 2012, Alpha will only ship, sell, or offer for sale in California  
25                  Reformulated Products. Such certification must be received by The Chanler Group on or before  
26                  December 1, 2012. The final civil penalty payment shall be apportioned in accordance with  
27                  California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the final civil penalty amount  
28                  remitted to OEHHA and the remaining 25% of the final civil penalty remitted to Dr. Held.

#### 29                  3.2       **Reimbursement of Plaintiff's Fees and Costs**

30                  The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
31                  reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee



1 issue to be resolved after the material terms of the agreement had been settled. Shortly after the  
2 other settlement terms had been finalized, Alpha expressed a desire to resolve the fee and cost issue.  
3 The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his  
4 counsel under general contract principles and the private attorney general doctrine codified at  
5 California Code of Civil Procedure § 1021.5, for all work performed in this matter, except fees that  
6 may be incurred on appeal. Under these legal principles, on or before the Effective Date, Alpha  
7 shall pay \$30,000 for fees and costs incurred investigating, litigating and enforcing this matter,  
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the  
9 Court's approval of this Consent Judgment in the public interest.

### 10 **3.3 Payment Procedures**

#### 11 **3.3.1 Payments Held in Trust**

12 All payments made under this Consent Judgment shall be held in trust until the Court  
13 approves the Consent Judgment. The Parties acknowledge that Dr. Held gave Alpha the option of  
14 depositing the funds into its attorney's trust account, but that Alpha elected to have the funds held in  
15 trust by The Chanler Group. The settlement funds shall be made payable by checks, as follows:

- 16 (a) "The Chanler Group in Trust for OEHHA" in the amount of \$4,875;
- 17 (b) "The Chanler Group in Trust for Anthony Held" in the amount of  
18 \$1,625; and
- 19 (c) "The Chanler Group in Trust" in the amount of \$30,000.

#### 20 **3.3.2 Issuance of 1099 Forms for Settlement Payments**

21 After the Consent Judgment has been approved, Alpha shall issue a 1099 form to  
22 each of the following entities:

- 23 (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
24 Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalty payment of \$4,875 to OEHHA;
- 25 (b) Anthony Held, whose address and tax identification number shall be  
26 furnished upon request after this Consent Judgment has been fully executed by the Parties for the  
27 civil penalty payment in the amount of \$1,625 to Dr. Held; and

1 (c) The Chanler Group (EIN: 94-3171522) for the fee and costs reimbursement  
2 paid in the amount of \$30,000.

3 **3.3.3 Payment Address**

4 All payments and tax documents required by this Consent Judgment shall be  
5 delivered to the following address:

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

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 Dr. Held's Public Release of Proposition 65 Claims**

11 Dr. Held acting on his own behalf and in the public interest releases Alpha from all claims for  
12 violations of Proposition 65 up through the Effective Date based on exposures to the Listed Chemical  
13 from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment  
14 constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemical from the  
15 Products as set forth in the Notice.

16 **4.3 Dr. Held's Individual Release of Claims**

17 Dr. Held also, in his individual capacity only and not in his representative capacity, provides a  
18 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
19 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
20 liabilities and demands of Dr. Held of any nature, character or kind, whether known or unknown,  
21 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed  
22 Chemical in the Products manufactured, distributed or sold by Alpha before the Effective Date.

23 **4.4 Alpha's Release of Dr. Held**

24 Alpha on behalf of itself, its past and current agents, representatives, attorneys, successors,  
25 and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys and other  
26 representatives, for any and all actions taken or statements made (or those that could have been taken  
27 or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
28

1 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
2 respect to the Products.

3 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California  
15 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or  
16 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Alpha  
17 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
18 extent that, the Products are so affected.

19 **8. NOTICES**

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

24 For Alpha Garment, Inc.:

25 William N. Le, Esq.  
26 Edwards Wildman Palmer LLP  
27 660 Newport Center Drive  
28 Suite 900  
Newport Beach, CA 92660

1 For Dr. Held:

2 Proposition 65 Coordinator  
3 The Chanler Group  
4 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

12 Dr. Held agrees to comply with the reporting form requirements referenced in California  
13 Health & Safety Code § 25249.7(f). In addition, the Parties acknowledge that, pursuant to  
14 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval  
15 of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Alpha and their  
16 respective counsel agree to mutually employ their best efforts to support the entry of this agreement  
17 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
18 manner. For purposes of this section, best efforts shall include, at a minimum, cooperating on the  
19 drafting and filing of any papers in support of the required motion for judicial approval.

20 **11. MODIFICATION**

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

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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read,  
3 understood, and agree to all of the terms and conditions of this Consent Judgment.

4 **AGREED TO:**

5 By: Anthony E. Held  
6 ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**

By: \_\_\_\_\_  
ALPHA GARMENT, INC.

8 **APPROVED**

9 Date: By Anthony Held at 2:06 pm, May 14, 2012

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

By: \_\_\_\_\_  
ANTHONY E. HELD, PH.D., P.E.

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

**AGREED TO:**

By:  \_\_\_\_\_  
ALPHA GARMENT, INC.

Name: Assad Charles Jebara

Title: VP

Date: 5/8/12

1 Plaintiff, Anthony Held, and defendant, Alpha Garment, Inc., having agreed  
2 through their respective counsel that Judgment be entered pursuant to the terms of their  
3 settlement agreement in the form of a Consent Judgment, and following this Court's  
4 issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to  
6 Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is  
7 hereby entered in accordance with the terms of the Consent Judgment attached hereto as  
8 Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the  
9 settlement under Code of Civil Procedure § 664.6.

10  
11 **IT IS SO ORDERED.**

12  
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14 Dated: AUG 15 2012

15 ROY CHERNUS  
16 JUDGE OF THE SUPERIOR COURT  
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# Exhibit 1