

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
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

APR 27 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Turner, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 PALOS VERDES FOOTWEAR, INC.; *et al.*,

18 Defendants.

) Case No.: CIV-1106338

) ^{FD}
) **[PROPOSED] JUDGMENT PURSUANT**
) **TO TERMS OF PROPOSITION 65**
) **SETTLEMENT AND [PROPOSED]**
) **CONSENT JUDGMENT**

) Date: April 27, 2012

) Time: 8:30 a.m.

) Dept.: E

) Judge: Hon. Faye D'Opal

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In the above-entitled action, Plaintiff ANTHONY E. HELD, PH.D., P.E. and Defendant PALOS VERDES FOOTWEAR, INC. having agreed that a judgment be entered pursuant to the terms of the Consent Judgment entered into by the parties, and following the issuance of an order approving this Proposition 65 settlement agreement on January __, 2012.

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

IT IS SO ORDERED.

Dated: 4/27/2012



JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,)

13 Plaintiff,)

14 v.)

15 PALOS VERDES FOOTWEAR, INC.; and)
16 DOES 1-150, inclusive,)

17 Defendants.)
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Case No. CIV-1106338

**[PROPOSED] CONSENT JUDGMENT AS
TO PALOS VERDES FOOTWEAR, INC.**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 1.1 Parties

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Plaintiff” or “Held”) and Palos Verdes Footwear, Inc. (“Palos” or “Defendant”), with Held
5 and Palos collectively referred to as the “Parties”.

6 Held is an individual residing in the State of California who invokes the private plaintiff
7 attorney general rights under the Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code section 25249.6, *et seq.* (“Proposition 65”).

9 Palos employs ten or more persons and is a person in the course of doing business for
10 purposes of Proposition 65.

11 1.2 General Allegations

12 Held alleges that Palos has sold Covered Products, as that term is defined in Section 1.3,
13 containing di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65 warnings in
14 California.

15 1.3 Covered Products

16 The term “Covered Products” means footwear containing DEHP, butyl benzyl phthalate
17 (“BBP”), and/or di-n-butyl phthalate (“DBP”) that are manufactured, imported, distributed,
18 and/or sold by Palos in California, including but not limited to, *Sideout Legend Sandals*,
19 #3367795.

20 1.4 Notice of Violation

21 On September 20, 2011, Held served Palos and various public enforcement agencies with
22 a document titled 60-Day Notice of Violation (the “Notice”) that informed Palos and the public
23 enforcers that Palos was alleged to be in violation of Proposition 65 for failing to warn its
24 customers and consumers in California that its Covered Products expose users to DEHP. No
25 public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1 1.5 Complaint

2 On December 30, 2011, Held filed the instant action in the Marin County Superior Court
3 (“Complaint”), stating a cause of action against Palos for the violations of California Health &
4 Safety Code section 25249.6 alleged in the Notice issued to Palos on September 20, 2011.

5 1.6 No Admission

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

14 **2. INJUNCTIVE RELIEF: REFORMULATION**

15 2.1 3P Standard for Covered Products

16 For purposes of this Consent Judgment, the 3P Standard is a maximum concentration of
17 1,000 parts per million (“ppm”) (0.1%), by weight, each of DEHP, BBP, and/or DBP in any
18 accessible component (*i.e.*, any component that is reasonably likely to be handled, touched or
19 mouthed during reasonably foreseeable use) of a Covered Product, when analyzed pursuant to
20 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

21 2.2 Reformulation Commitment

22 Commencing on December 31, 2012, Palos and its corporate affiliates shall only
23 manufacture, import, distribute, sell, or offer for sale in California Covered Products that meet the
24 “3P Standard” as set forth in Section 2.1 above. In addition, within thirty (30) days of execution
25 of this Consent Judgment by both Parties, Palos shall provide the 3P Standard to its then-current
26 Vendors of footwear that will be sold or offered for sale to California citizens and shall instruct
27 each Vendor to use reasonable efforts to provide footwear that complies with the 3P Standard
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1 expeditiously. For purposes of this Consent Judgment the term “Vendor” means a person or
2 entity that manufactures, imports, distributes, sells, or otherwise supplies footwear to Palos.

3 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

4 3.1 Civil Penalty

5 On or before January 31, 2012, Palos shall make a payment of \$6,000, pursuant to Health
6 & Safety Code section 25249.7, subsection (b). This penalty reflects a credit of \$10,000 based on
7 Palos’ commitment to reformulate the Products pursuant to Section 2 above. The civil penalty
8 payment shall be apportioned in accordance with Health & Safety Code section 25249.12,
9 subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of California’s
10 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of these
11 penalty monies earmarked for Held.

12 3.2 Reimbursement of Plaintiff’s Fees and Costs

13 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
15 issue to be resolved after the material terms of the agreement had been settled. Held then
16 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
17 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
18 to Held and his counsel under general contract principles and the private attorney general
19 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
20 this matter, except fees that may be incurred on appeal. Under these legal principles, Palos shall
21 pay the amount of \$28,000, on or before January 31, 2012, for fees and costs incurred
22 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
23 to be incurred) negotiating, drafting, and obtaining the Court’s approval of this Consent
24 Judgment in the public interest.

25 3.3 Payment Procedures

26 3.3.1 All payments made under this Consent Judgment shall be held in trust by
27 Buchalter Nemer, counsel for Palos, until the Court approves the Consent Judgment. The
28 settlement funds shall be made payable by checks, as follows:

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- (a) One check made payable to “Buchalter Nemer in Trust for OEHHA” in an amount equal to \$4,500;
- (b) One check made payable to “Buchalter Nemer in Trust for Anthony E. Held” in an amount equal to \$1,500; and
- (c) One check made payable to “Buchalter Nemer in Trust for The Chanler Group” in the amount of \$28,000.

The attorney of record for Palos shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within two days of the date of the hearing on which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in an amount equal to \$4,500;
- (b) One check made payable to “The Chanler Group in Trust for Anthony E. Held” in an amount equal to \$1,500; and
- (c) One check made payable to “The Chanler Group” in the amount of \$28,000.

3.3.2 After the Consent Judgment has been approved, Palos shall issue a 1099 form to each of the following entities:

- (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for the civil penalties in the amount of \$4,500, payable to OEHHA;
- (b) Held, whose address and tax identification number shall be furnished upon request, for the civil penalties in the amount of \$1,500, payable to Held; and
- (c) The Chanler Group (EIN: 94-3171522) for the amount of \$28,000.

1 3.3.3 All payments shall be delivered to the following address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 **4. RELEASE OF ALL CLAIMS**

8 4.1 Full, Final, and Binding Resolution of Proposition 65 Allegations

9 This Consent Judgment is a full, final, and binding resolution between Plaintiff on behalf
10 of himself and on behalf of the general public in California, and Palos, and its parents,
11 subsidiaries, and affiliated entities that are under common ownership, directors, officers,
12 employees, and attorneys (“Defendant Releasees”), based on the failure to warn about exposures
13 to DEHP contained in Covered Products sold in California as alleged in the Notice received
14 Palos. The benefits of this agreement extend to each entity to whom each Defendant Releasee
15 directly distributes or sells Covered Products, including but not limited to distributors,
16 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
17 (“Downstream Releasees”).

18 4.2 Plaintiff’s Public Release of Proposition 65 Claims

19 In further consideration of the promises and agreements herein contained, Plaintiff on
20 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
21 assignees, and in the interest of the general public, hereby waives all rights to institute or
22 participate in, directly or indirectly, any form of legal action and releases all claims, including,
23 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
24 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
25 investigation fees, expert fees, and attorneys’ fees, exclusive of fees and costs on appeal) of any
26 nature whatsoever, fixed or contingent (collectively “Claims”) against Palos, each of its
27 Defendant Releasees, and each of its Downstream Defendant Releasees, arising under Proposition
28 65 with respect to DEHP in the Covered Products sold by Palos in California before December
31, 2012.

1 4.3 Plaintiff's Individual Release of Claims

2 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 Claims, liabilities and demands of any nature, character or kind, whether known or unknown,
5 suspected or unsuspected, against Palos, each of its Defendant Releasees, and each of its
6 Downstream Defendant Releases, limited to past violations arising out of Proposition 65 or
7 alleged or actual exposure to DEHP, DBP, and/or BBP in all products manufactured, distributed,
8 or sold by Palos.

9 4.4 Palos' Release of Held

10 Palos, on behalf of itself, its past and current agents, representatives, attorneys, successors,
11 and/or assignees, hereby waives any and all claims against Held, his attorneys, and other
12 representatives for any and all actions taken or statements made (or those that could have been
13 taken or made) by Held and his attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking to enforce of Proposition 65 against them in this matter,
15 and/or with respect to the Covered Products.

16 **5. SEVERABILITY**

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

20 **6. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of
22 California and apply within the state of California.

23 **7. NOTICES**

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

2 John Lovely, President
3 Palos Verdes Footwear, Inc.
4 1010 Sandhill Avenue
5 Carson, CA 90746

6 With a copy to:

7 Russell L. Allyn, Esq.
8 Michael B. Fisher, Esq.
9 Buchalter Nemer, APC
10 1000 Wilshire Boulevard, Suite 1000
11 Los Angeles, CA 90017

12 To Plaintiff:

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

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

20 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or portable
22 document format (pdf) signature, each of which shall be deemed an original, and all of which,
23 when taken together, shall constitute one and the same document.

24 **9. POST-EXECUTION ENFORCEMENT**

25 Should Held prevail on any motion, application for an order to show cause, or other
26 proceeding to enforce a violation of this Consent Judgment, Held shall be entitled to his
27 reasonable attorney's fees and costs incurred as a result of such motion or application, consistent
28 with Code of Civil Procedure section 1021.5. Should Palos prevail on any motion or application
for an order to show cause or other proceeding that it brings, Palos may be awarded its reasonable
attorney's fees and costs as a result of such motion or application upon a finding by the court that
Held's defense of the motion or application lacked substantial justification. For purposes of this
Consent Judgment, the term substantial justification shall carry the same meaning as used in Civil
Discovery Act, Code of Civil Procedure section 2016.010 *et seq.*

1 Except as specifically provided in this agreement, each Party shall bear its own costs and
2 attorney's fees in connection with this action. Nothing in this agreement shall preclude a Party
3 from seeking an award of sanctions pursuant to law.

4 **10. ADDITIONAL POST-EXECUTION ACTIVITIES**

5 Held agrees to comply with the reporting form requirements referenced in California
6 Health & Safety Code section 25249.7(f). The Parties acknowledge that, pursuant to Health &
7 Safety Code section 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this
8 Consent Judgment. In furtherance of obtaining such approval, Held's counsel shall prepare a
9 motion for this Consent Judgment's approval by the Court, and Held and Palos, and their
10 respective counsel, agree to mutually employ their best efforts to support the entry of this
11 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
12 timely manner. For purposes of this Paragraph, "best efforts" shall include, at a minimum,
13 joining in Plaintiff's motion for judicial approval, if requested, and supporting Plaintiff's efforts
14 to obtain judicial approval of, and an entry of judgment pursuant to the terms of, this Consent
15 Judgment.

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) by written agreement of the Parties
18 and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful
19 motion or application of any party and entry of a modified consent judgment by the Court.

20 **12. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any Party
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
26 deemed to exist or to bind any of the Parties. This Consent Judgment may be modified only by
27 stipulation of the Parties and an order of the Court or upon a motion by any Party that is granted
28 by the Court.

1 **13. AUTHORIZATION**

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

<p>5 AGREED TO:</p> <p>6 Plaintiff, ANTHONY E. HELD, Ph.D.</p> <p>7 APPROVED</p> <p>8 By Anthony Held at 4:27 pm, Jan 09, 2012</p> <p>9 Signature</p> <p>10 Date: <u>Anthony E Held</u></p>	<p>5 AGREED TO:</p> <p>6 Defendant, Palos Verdes Footwear, Inc.</p> <p>7 <u>John Lovely</u></p> <p>8 Signature</p> <p>9 By: <u>John Lovely</u></p> <p>10 Signatory's Name</p> <p>11 Its: <u>President</u></p> <p>12 Signatory's Title</p> <p>13 Date:</p>
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