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2 Josh Voorhees, State Bar No. 241436  
3 Troy C. Bailey, State Bar No. 277424  
4 THE CHANLER GROUP  
5 2560 Ninth Street, Suite 214  
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9 Attorneys for Plaintiff  
10 ANTHONY E. HELD, PH.D., P.E.

ENDORSED  
FILED  
ALAMEDA COUNTY  
NOV 27 2012  
CLERK OF THE SUPERIOR COURT  
By ~~YOLANDA ESTRADA~~ Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
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16 ANTHONY E. HELD, PH.D., P.E.,  
17 Plaintiff,  
18 v.  
19 OLEM SHOE CORP.; *et al.*,  
20 Defendants.

Case No. RG-12612136

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

Date: November 27, 2012  
Time: 2:30 p.m.  
Dept. 514  
Judge: Hon. George C. Hernandez, Jr.

Reservation No. 1330340

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Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Olem Shoe Corp., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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: 11/27/12

GEORGE C. HERNANDEZ, JR  
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Christopher M. Martin, State Bar No. 186021  
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10 Attorneys for Plaintiff  
11 Anthony E. Held, Ph.D., P.E.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 OLEM SHOE CORP.; and DOES 1-150,  
16 inclusive.

17 Defendants.

Case No. RG-12612136

**[PROPOSED] CONSENT JUDGMENT**

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[PROPOSED] CONSENT JUDGMENT

1     **1. INTRODUCTION**

2             **1.1 Anthony E. Held, Ph.D., P.E. and Olem Shoe Corp.**

3             This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4     P.E. (“Dr. Held” or “Plaintiff”) and defendant Olem Shoe Corp. (“Olem Shoe” or “Defendant”),  
5     with Plaintiff and Defendant collectively referred to as the “Parties” and each individually  
6     referred to as a “Party.”

7             **1.2 Plaintiff**

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

11            **1.3 Defendant**

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

15            **1.4 General Allegations**

16            Dr. Held alleges that Olem Shoe manufactured, imported, distributed, sold and/or  
17    offered for sale footwear containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of  
18    California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition  
19    65 as known to the State of California to cause birth defects and other reproductive harm.

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are defined as flats<sup>1</sup> containing  
22    DEHP including, but not limited to, the *Pierre Dumas Flats, EDDY-4, #81136 101 (#7 80455*  
23    *25887 3)*, which Olem Shoe manufactured, imported, distributed, sold and/or offered for sale in  
24    the State of California, hereinafter referred to as the “Products.”

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28            <sup>1</sup> For purposes of this Consent Judgment, “flats” shall mean flat shoes having an unraised or only slightly raised heel.

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**1.6 Notice of Violation**

On October 28, 2011, Dr. Held served Olem Shoe and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 for failing to warn consumers that the Products exposed users in California to DEHP.

**1.7 Complaint**

On or about January 12, 2012, Dr. Held, who was and is acting in the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of Alameda against Olem Shoe, Inc. and Does 1 through 150, alleging, *inter alia*, violations of Proposition 65 based on the alleged exposures to DEHP contained in the Products.

**1.8 No Admission**

Olem Shoe denies the material factual and legal allegations contained in Dr. Held's Notice and Complaint, and maintains that all Products sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Olem Shoe of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Olem Shoe of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Olem Shoe. However, this section shall not diminish or otherwise affect Olem Shoe's obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Olem Shoe as to the allegations contained in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date  
3 this Consent Judgment is approved by the court.

4           **2. INJUNCTIVE RELIEF: REFORMULATION**

5           After the Effective Date, Olem Shoe shall only manufacture, import, distribute, sell  
6 and/or offer for sale in California Products that are "Reformulated Products." For purposes of  
7 this Consent Judgment, "Reformulated Products" shall mean Products containing less than or  
8 equal to 1,000 parts per million (0.1%) DEHP when analyzed pursuant to Environmental  
9 Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized  
10 by federal and state agencies for the purpose of determining DEHP content in a solid substance.

11           Reformulated Products shall be deemed to comply with Proposition 65 as it relates to the  
12 presence of DEHP in the Products and shall be exempt from any Proposition 65 warning  
13 requirements regarding DEHP.

14           **3. MONETARY PAYMENTS**

15           **3.1 Civil Penalty Payments Pursuant to Health & Safety Code § 25249.7(b)**

16           Pursuant to Health & Safety Code § 25249.7(b), Olem Shoe shall pay \$18,000 in civil  
17 penalties. Olem Shoe shall pay an initial civil penalty of \$5,000 and a final civil penalty of  
18 \$13,000 on the dates provided in Section 3.3. However, the final civil penalty shall be waived in  
19 its entirety if an officer of Olem Shoe provides Dr. Held with a written certification that, as of  
20 October 15, 2012, and continuing on into the future, Olem Shoe has sold and will continue to sell  
21 only Reformulated Products as defined by Section 2 of this Consent Judgment. Dr. Held must  
22 receive any such certification no later than March 15, 2013, and time is of the essence.

23           The penalty payments will be allocated according to Health & Safety Code §§ 25249.12  
24 (c)(1) & (d), with seventy-five percent (75%) of the penalty amount earmarked for the California  
25 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five  
26 (25%) of the penalty amount earmarked for Dr. Held.

1           **3.2 Reimbursement of Plaintiff's Fees and Costs**

2           The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
4 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
5 Olem Shoe then expressed a desire to resolve the fee and cost issue shortly after the other  
6 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
7 the compensation due to Dr. Held and his counsel under general contract principles and the  
8 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all  
9 work performed in this matter, except fees that may be incurred on appeal. Under these legal  
10 principles, Olem Shoe shall pay the amount of \$30,000 for fees and costs incurred investigating,  
11 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)  
12 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public  
13 interest.

14           **3.3 Payment Procedures**

15           **3.3.1 Funds Held In Trust.** The initial civil penalty payments required by  
16 Sections 3.1 and the payment required by Section 3.2 shall be delivered on or before the  
17 Effective Date to either The Chanler Group or the attorneys for Olem Shoe, Burstein &  
18 Associates, P.A., and shall be held in trust pending the Court's approval of this Consent  
19 Judgment.

20           Payments delivered to The Chanler Group shall be made payable, as follows:

- 21                   (a) One check made payable to "The Chanler Group in Trust for  
22                                   OEHHA" in the amount of \$3,750;  
23                   (b) One check made payable to "The Chanler Group in Trust for  
24                                   Anthony E. Held, Ph.D., P.E." in the amount of \$1,250; and  
25                   (c) One check made payable to "The Chanler Group in Trust" in the  
26                                   amount of \$30,000.

1 Payments delivered to Burstein & Associates, P.A. shall be made payable, as follows:

- 2 (a) One check made payable to "Burstein & Associates, P.A. in Trust  
3 for OEHHA" in the amount of \$3,750;
- 4 (b) One check made payable to "Burstein & Associates, P.A. in Trust  
5 for Anthony E. Held, Ph.D., P.E." in the amount of \$1,250; and
- 6 (c) One check made payable to "Burstein & Associates, P.A. in Trust  
7 for The Chanler Group" in the amount of \$30,000.

8 If Olem Shoe elects to deliver payments to Burstein & Associates, P.A., Burstein &  
9 Associates, P.A. shall: (a) provide The Chanler Group with written confirmation within five  
10 days of receipt that the funds have been deposited in a trust account; and (b) within two days of  
11 the Effective Date, deliver the payment to The Chanler Group in three separate checks, as  
12 follows:

- 13 (a) One check made payable to "The Chanler Group in Trust for  
14 OEHHA" in the amount of \$3,750;
- 15 (b) One check made payable to "The Chanler Group in Trust for  
16 Anthony E. Held, Ph.D., P.E." in the amount of \$1,250; and
- 17 (c) One check made payable to "The Chanler Group" in the amount of  
18 \$30,000.

19 If the final civil penalty of \$13,000 referenced in Section 3.1 above is not waived,  
20 payments shall be delivered on or before March 29, 2013, to The Chanler Group and made  
21 payable, as follows:

- 22 (a) One check made payable to "The Chanler Group in Trust for  
23 OEHHA" in the amount of \$9,750;
- 24 (b) One check made payable to "The Chanler Group in Trust for  
25 Anthony E. Held, Ph.D., P.E." in the amount of \$3,250.

26 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved  
27 and the settlement funds have been transmitted to plaintiff's counsel, Olem Shoe shall issue  
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**14. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: **APPROVED**  
By Tony Held at 11.45 am. Sep 11. 2012

Date: Sept. 25, 2012

By: Anthony E Held  
Plaintiff ANTHONY E. HELD Ph.D.,  
P.E.

By: [Signature]  
Defendant OLEM SHOE CORP.