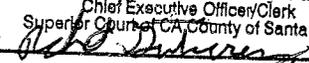


1 Brian C. Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone:(510) 848-8880  
8 Facsimile: (510) 848-8118

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

**FILED**

DEC 23 2014

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY  DEPUTY

Robert Gutierrez

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SANTA CLARA

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 JIMCO LAMP & MANUFACTURING  
18 COMPANY, *et al.*,

19 Defendants.

Case No. 114CV268685

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

Date: December 18, 2014

Time: 9:00 a.m.

Dept. 3

Judge: Hon. William J. Elfving

1 Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Jimco Lamp &  
2 Manufacturing Company, having agreed through their respective counsel that Judgment be  
3 entered pursuant to the terms of their settlement agreement in the form of a consent  
4 judgment, and following this Court's issuance of an order approving their Proposition 65  
5 settlement and Consent Judgment on December 18, 2014, and for good cause being shown,

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

11 **IT IS SO ORDERED.**

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Dated: 12/23/14

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

**James L. Stoelker**



1 Brian C. Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
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  
10 Attorneys for Plaintiff  
11 ANTHONY E. HELD, PH.D., P.E.

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

12 ANTHONY E. HELD, PH.D., P.E.,  
13 Plaintiff,  
14 v.  
15 JIMCO LAMP & MANUFACTURING  
16 COMPANY; *et al.*,  
17 Defendants.

Case No. 114CV268685  
[PROPOSED] CONSENT JUDGMENT  
(Health & Safety Code § 25249.6 *et seq.*)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.  
4 (“Held”) and Jimco Lamp & Manufacturing Company (“Jimco”), with Held and Jimco each  
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Jimco 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, Health and Safety Code  
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Jimco manufactures, sells, and/or distributes for sale in California, lamps  
16 with vinyl/PVC components (cords and decorations) that contain the chemical di(2-  
17 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to  
18 cause birth defects or other reproductive harm. Held alleges that Jimco failed to provide the health  
19 hazard warning required by Proposition 65 for exposures to DEHP from the lamps.

20 **1.5 Product Description**

21 The term “Products,” as used herein, shall refer to any lamps with vinyl/PVC components  
22 containing DEHP that are distributed for sale in California by Jimco, or an Authorized Retailer of  
23 Jimco, including the lamp designated *Lamp, T-17007, #3546132-2, #19 17007 (UPC #0 82803*  
24 *10475 8)*. For purposes of this Consent Judgment, “Authorized Retailer” is any customer of Jimco’s  
25 with retail stores, warehouses, or distribution centers in California, or who Jimco reasonably believes  
26 to conduct online sales via the internet in or into California, and to whom Jimco either (a) directly  
27 sells the Products, or (b) has authorized as a reseller of the Products.

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**1.6 Notice of Violation**

On or about September 26, 2013, Held served Jimco and various public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Jimco violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP in levels that Held believes require labeling under the relevant law. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.7 Complaint**

On July 31, 2014, Held filed the instant action (“Complaint”), naming Jimco as a defendant for the violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

**1.8 No Admission**

Jimco denies the material, factual, and legal allegations contained in the Notice and Complaint, and it maintains that all of the products that it has sold and distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Jimco’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Jimco as to the allegations in the Complaint, that venue is proper in the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section 664.6.

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” means October 31, 2014.

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

2            2.1    **Reformulation Standard**

3            Subject to Section 2.3 of this Agreement, Jimco agrees, commencing on or before the date  
4 that is thirty days after the Effective Date, that it will only purchase for sale, or manufacture for sale  
5 in California, (1) "Reformulated Products"; or (2) Products to be purchased for sale with a clear and  
6 reasonable warning pursuant to Section 2.2. For purposes of this Consent Judgment, the term  
7 "Reformulated Products" shall refer to Products (as that term is defined in Section 1.5) that contain  
8 no more than 1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing  
9 methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for  
10 purposes of determining DEHP content in a solid substance.

11            2.2    **Clear and Reasonable Warnings**

12            Commencing on or before the date that is thirty days after the Effective Date, for all Products  
13 that are not Reformulated Products (i.e. contain more than 1,000 parts per million ("ppm") DEHP  
14 content), Jimco agrees that it will only purchase such Products for sale or shipment in California with  
15 a clear and reasonable warning utilized pursuant to this Section. Jimco further agrees that the  
16 warning will be prominently placed with such conspicuousness as compared with other words,  
17 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
18 individual under customary conditions before purchase or use. For purposes of this Consent  
19 Judgment, a clear and reasonable warning shall consist of a warning affixed to the packaging, label,  
20 tag or directly to a Product sold in California containing language similar to the following examples:

21                    **WARNING:**        This product contains DEHP, a chemical known  
22    to the State of California to cause birth defects or  
23    other reproductive harm.

24            For Products that Jimco knows to contain both a Proposition 65-listed carcinogen and a chemical  
25 known to cause reproductive harm or birth defects, Jimco may use the following warning statement:

26                    **WARNING:**        This product contains chemicals known to the  
27    State of California to cause cancer and birth  
28    defects or other reproductive harm.

1           **2.3     Actions in Event of Alleged Breach**

2           In the event Held believes Jimco has breached Section 2 of this Consent Judgment, Held shall  
3 provide written notice to Jimco setting forth the details of the alleged breach, including the name and  
4 model number of the Product involved, the date of its purchase, the specific location of its purchase,  
5 and the ppm DEHP content Held alleges to exist within the Product. Jimco shall have the  
6 opportunity to respond to Held's notice within 30 days after receipt of such written notice.  
7 Thereafter, the Parties agree to reasonably cooperate, to meet and confer for a period of not less than  
8 30 days, and to use their best efforts, and that of their counsel, to resolve any dispute, prior to any  
9 Party filing a civil complaint, a motion to enforce this Agreement, or any other court or  
10 administrative filing related to the dispute.

11           **3.     MONETARY SETTLEMENT TERMS**

12           **3.1     Civil Penalty Payments**

13           Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
14 this Consent Judgment, Jimco shall pay \$12,000 in civil penalties pursuant to this Section 3.1. Each  
15 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)  
16 and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental  
17 Health Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held.

18           **3.1.1    Initial Civil Penalty**

19           Within thirty days of the Effective Date, Jimco shall make an initial civil penalty  
20 payment of \$4,000. Jimco shall provide its payment in two checks for the following amounts made  
21 payable to: (a) "OEHHA" in the amount of \$3,000; and (b) "Anthony E. Held, Ph.D., P.E., Client  
22 Trust Account" in the amount of \$1,000.

23           **3.1.2    Final Civil Penalty**

24           On or before December 31, 2014, Jimco shall make a final civil penalty payment of  
25 \$8,000. Pursuant to title 11 California Code of Regulations, section 3203(c). Held agrees that the  
26 final civil penalty payment shall be waived in its entirety if, no later than December 15, 2014, an  
27 officer of Jimco provides Held with written certification that all of the Products sold or purchased for  
28 sale in California as of the date if its certification are being sold in Compliance with the reformulation

1 and warning requirements of Sections 2.1 and 2.2., and that Jimco will continue to offer only  
2 Reformulated Products in California in the future. The option to certify reformulation in lieu of  
3 making the final civil penalty payment required by this Section is a material term, and with regard to  
4 such term, time is of the essence.

### 5 **3.2 Reimbursement of Fees and Costs**

6 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
8 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
9 other settlement terms had been finalized, Jimco expressed a desire to resolve Held's fees and costs.  
10 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his  
11 counsel under general contract principles and the private attorney general doctrine codified at  
12 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
13 execution of this Consent Judgment. On or before the Effective Date, Jimco shall pay \$33,500 for  
14 the fees and costs incurred by Held investigating, bringing this matter to Jimco's attention, and  
15 negotiating a settlement in the public interest.

### 16 **3.3 Payment Procedures**

17 Except for the final civil penalty payment required by Section 3.1.2, all payments due under  
18 this Consent Judgment are to be held in trust by Jimco's counsel until such time as the Court  
19 approves the Consent Judgment. Within five days of an order from the Court approving the Consent  
20 Judgment, all payments shall be delivered OEHHA, Held, and Held's counsel at the addresses  
21 provided below.

#### 22 **3.3.1 Payment Addresses**

23 (a) All payments for Held and his counsel shall be delivered to:

24 The Chanler Group  
25 Attn: Proposition 65 Controller  
26 2560 Ninth Street  
27 Parker Plaza, Suite 214  
28 Berkeley, CA 94710

(b) All payments for OEHHA shall be delivered directly to OEHHA (Checks

1 with memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

2 For United States Postal Service Delivery:

3 Mike Gyurics  
4 Fiscal Operations Branch Chief  
5 Office of Environmental Health Hazard Assessment  
6 P.O. Box 4010  
7 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery or Courier:

9 Mike Gyurics  
10 Fiscal Operations Branch Chief  
11 Office of Environmental Health Hazard Assessment  
12 1001 I Street  
13 Sacramento, CA 95812-4010

14 **3.3.2 Proof of Payment to OEHHA**

15 Jimco shall provide Held's counsel with a copy of the checks sent to OEHHA  
16 enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Held's Public Release of Proposition 65 Claims**

19 Held, acting on his own behalf and in the public interest, releases Jimco and its parents,  
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
21 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the  
22 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,  
23 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any  
24 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products  
25 purchased for sale by Jimco prior to the date that is thirty days after the Effective Date, as set forth  
26 in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with  
27 Proposition 65 with respect to exposures to DEHP from the Products sold by Jimco before the  
28 Effective Date, as set forth in the Notice.

**4.2 Held's Individual Release of Claims**

Held, in his individual capacity only and *not* in his representative capacity, also provides a  
release to Jimco, Releasees, and Downstream Releasees which shall be effective as a full and final  
accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,

1 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or  
2 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
3 exposures to DEHP in the Products purchased for sale by Jimco prior to the date that is thirty days  
4 after the Effective Date.

5 **4.3 Jimco's Release of Held**

6 Jimco, on its own behalf, and on behalf of its past and current agents, representatives,  
7 attorneys, successors, and assignees, hereby waives any and all claims against Held and his  
8 attorneys and other representatives, for any and all actions taken or statements made by Held and  
9 his attorneys and other representatives, whether in the course of investigating claims, otherwise  
10 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
14 has been fully executed by the Parties.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
17 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
18 adversely affected.

19 **7. 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 Jimco may  
23 provide written notice to Englander 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 Jimco from any  
26 obligation to comply with any pertinent state or federal toxics control laws.

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1   **8.    NOTICE**

2           Unless specified herein, all correspondence and notice required by this Consent Judgment  
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Jimco:

6           Mark Biggers, President  
7           Jimco Lamp & Manufacturing Company  
8           11759 Hwy 63B  
9           Bono, AR 72416

10          with a copy to:

11          Jeffrey J. Lauderdale, Esq.  
12          Calfee, Halter & Griswold LLP  
13          1405 East Sixth Street  
14          Cleveland, Ohio 44114

15 For Held:

16          The Chanler Group  
17          Attn: Proposition 65 Coordinator  
18          2560 Ninth Street  
19          Parker Plaza, Suite 214  
20          Berkeley, CA 94710

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

23   **9.    COUNTERPARTS; FACSIMILE SIGNATURES**

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

27   **10.   POST EXECUTION ACTIVITIES**

28           Held agrees to comply with the reporting form requirements referenced in Health and Safety  
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
furtherance of obtaining such approval, Held and Jimco agree to mutually employ their best efforts,  
and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial  
approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall

1 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and  
2 supporting the motion for judicial approval.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
5 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
6 Party, and the entry of a modified consent judgment by the Court.

7 **12. AUTHORIZATION**

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

10 **AGREED TO:**  
11 **APPROVED**  
12 *By Tony Held at 2:01 pm, Sep 29, 2014*  
13 Date: \_\_\_\_\_  
14 By: Anthony E. Held  
15 ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**  
Date: 9/22/14  
By: Mark Biggers  
Mark Biggers, President  
JIMCO LAMP & MANUFACTURING  
COMPANY

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
**191 N. First Street**  
**San Jose, CA 95113-1090**

TO: Brian C. Johnson  
The Chanler Group  
2560 Ninth Street Parker Plaza, Suite 214  
Berkeley, CA 94710

RE: Anthony E Held, Ph.D., P.P. vs Jimco Lamp & Manufacturing Company  
Case Nbr: 1-14-CV-268685

**PROOF OF SERVICE**

JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

was delivered to the parties listed below in the above entitled case as set forth in the sworn declaration below.

---

Parties/Attorneys of Record:

CC:

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 12/23/14. DAVID H. YAMASAKI, Chief Executive Officer/Clerk by Robert Gutierrez, Deputy