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12 Attorneys for Defendant
13 ADVANCE WATCH COMPANY, LTD.
dba GENEVA WATCH COMPANY, INC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SACRAMENTO
17 UNLIMITED CIVIL JURISDICTION
18

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

20 Plaintiff,

21 v.

22 ADVANCE WATCH COMPANY, LTD.,
23 GENEVA WATCH COMPANY, INC., and
DOES 1 through 150, inclusive,

24 Defendants.
25

Case No. 07AS04690

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Advance Watch Company, Ltd.**

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 Advance Watch Company, Ltd. dba Geneva Watch
5 Company, Inc. ("Advance Watch" or "Defendant"), with Plaintiff and Defendant collectively
6 referred to as the "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Advance Watch has been in the chain of distribution of toys or other
17 children's products containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State of
18 California without the requisite health hazard warnings. DEHP is known to cause birth defects
19 and other reproductive harm and is listed by its chemical nomenclature pursuant to Proposition 65.
20 DEHP is listed by the State of California under Proposition 65 and shall be referred to hereinafter
21 as the "Listed Chemical".

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: children's
24 watches containing the plasticizer phthalate DEHP, such as the *Sesame Street LCD Watch*
25 *#878647 (#6 53899 60019 8)*, for which Advance Watch was in the chain of distribution in the
26 State of California. All such children's watches containing DEHP are referred to hereinafter as the
27 "Products".

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1 **1.6 Notice of Violation**

2 On August 2, 2007, Dr. Held served Advance Watch and various public enforcement
3 agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Advance
4 Watch and public enforcers with notice of alleged violations of California Health & Safety Code
5 §25249.6 for failing to warn consumers that the Products exposed users in California to DEHP.

6 **1.7 Complaint**

7 On October 12, 2007, Dr. Held, who was and is acting in the interest of the general public
8 in California, filed a complaint ("Complaint") in the Superior Court in and for the County of
9 Sacramento against Advance Watch Company, Ltd. and Does 1 through 150, alleging violations
10 of California Health & Safety Code §25249.6 based on the alleged exposures to DEHP contained
11 in the Products.

12 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Advance Watch as to the allegations contained in the Complaint, that venue is
24 proper in the County of Sacramento and that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "effective date" shall mean June 16,
3 2008.

4 **2. INJUNCTIVE RELIEF**

5 **2.1** As of the effective date, Advance Watch represents that it is no longer involved in
6 the chain of distribution of Products in the State of California, and agrees that it will not sell, ship,
7 offer to be shipped for sale or be in the chain of distribution for sale in California of Products
8 containing the Listed Chemical.

9 **3. MONETARY PAYMENTS**

10 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

11 In settlement of all the claims referred to in this Consent Judgment, Advance Watch shall
12 pay \$8,000 in civil penalties to be apportioned in accordance with California Health & Safety
13 Code §25192, with 75% of these funds remitted to the State of California's Office of
14 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
15 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d).
16 Advance Watch shall issue two separate checks for the penalty payment: (a) one check made
17 payable to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of \$6,000, representing
18 75% of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held"
19 in the amount of \$2,000, representing 25% of the total penalty. Two separate 1099s shall be
20 issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
21 0284486); and (b) Anthony Held, whose information shall be provided five calendar days before
22 the payment is due.

23 Payment shall be delivered on or before July 1, 2008, to Dr. Held's counsel at the
24 following address:

25 Hirst & Chanler LLP
26 Attn: Proposition 65 Controller
27 Capitol Mall Complex
28 455 Capitol Mall, Suite 605
 Sacramento, CA 95814

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

3 **4.1 Attorney Fees and Costs**

4 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
6 this fee issue to be resolved after the material terms of the agreement had been settled. Advance
7 Watch then expressed a desire to resolve the fee and cost issue shortly after the other settlement
8 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
9 compensation due to Dr. Held and his counsel under general contract principles and the private
10 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
11 work performed through the mutual execution of this agreement. Advance Watch shall reimburse
12 Dr. Held and his counsel a total of \$28,000 for fees and costs incurred as a result of investigating,
13 bringing this matter to Advance Watch's attention, and litigating and negotiating a settlement in
14 the public interest. Advance Watch shall issue a separate 1099 for fees and costs (EIN: 20-
15 3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered on or
16 before July 1, 2008 to the following address:

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18 Hirst & Chanler LLP
19 Attn: Proposition 65 Controller
20 Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

21 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval**

22 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Advance Watch will reimburse
23 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval
24 of this settlement agreement in the trial court, in an amount not to exceed \$4,250. Such additional
25 fees and costs, exclusive of fees and costs that may be incurred in the event of an appeal include,
26 but are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
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1 requirements referenced in Health & Safety Code §25249.7(f), corresponding with opposing
2 counsel responding to any third party objections and appearing before the Court related to the
3 approval process.

4 Reimbursement of such additional fees and costs shall be due within ten days after receipt
5 of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee
6 Claim shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the
7 following address:

8 Hirst & Chanler LLP
9 Attn: Proposition 65 Controller
10 Capitol Mall Complex
11 455 Capitol Mall, Suite 605
12 Sacramento, CA 95814

13 Advance Watch has the right to object to such reimbursement and may submit the
14 resolution of this issue to the American Arbitration Association (AAA) in Northern California to
15 determine the reasonableness of the additional fees and costs sought, provided that a notice of
16 objection or decision to arbitrate is received by Dr. Held by the end of the ten calendar days. If an
17 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the
18 Court pursuant to both CCP §1021.5 and this settlement agreement to recover additional attorney
19 fees and costs incurred as set forth in this paragraph. In the event Advance Watch submits the
20 matter to arbitration, Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and
21 costs incurred for the arbitration.

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Dr. Held's Release of Advance Watch**

24 In further consideration of the promises and agreements herein contained, and for the
25 payments to be made pursuant to Sections 3 and 4 of this Consent Judgment, Dr. Held on behalf of
26 himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
27 the interest of the general public, hereby waives all rights to institute or participate in, directly or
28 indirectly, any form of legal action and releases all claims, including, without limitation, all

1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
2 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
3 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
4 contingent (collectively "claims"), against Advance Watch and each of its downstream
5 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,
6 purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers,
7 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent
8 entities (collectively "releasees"). This release is limited to those claims that arise under
9 Proposition 65 as such claims relate to Advance Watch's alleged failure to warn about exposures
10 to the Listed Chemical contained in the Products.

11 The Parties further understand and agree that this release shall not extend upstream to any
12 entities that manufactured the Products or any component parts thereof or to any distributors or
13 suppliers who sold the Products or any component parts thereof to Advance Watch.

14 **5.2 Advance Watch's Release of Dr. Held**

15 Advance Watch waives any and all claims against Dr. Held, his attorneys, and other
16 representatives for any and all actions taken or statements made (or those that could have been
17 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
19 matter, and/or with respect to the Products.

20 **6. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within six
23 months after it has been fully executed by all parties, in which event any monies that have been
24 provided to Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above, shall be
25 refunded within fifteen (15) days after receiving written notice from Advance Watch that the six-
26 month period has expired.

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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed or
8 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Advance
9 Watch shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
10 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Products are so affected.

12 **9. NOTICES**

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

17 To Advance Watch:

18 M. Elizabeth McDaniel, Esq.
19 Sheppard Mullin Richter & Hampton LLP
20 4 Embarcadero Center, 17th Floor
21 San Francisco, CA 94111

22 To Dr. Held:

23 Proposition 65 Coordinator
24 Hirst & Chanler LLP
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

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

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

9 Dr. Held and Advance Watch agree to mutually employ their best efforts to support the
10 entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by
11 the Court in a timely manner. The Parties acknowledge that, pursuant to California Health &
12 Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent
13 Judgment. Accordingly, Dr. Held agrees to file a Motion to Approve the Consent Judgment.

14 **13. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
16 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
17 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall
18 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
19 days in advance of its consideration by the Court.

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1 **14. 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.

5 **AGREED TO:**

AGREED TO:

6 Date: 06/16/2008

Date: _____

7 *Anthony E Held*
8 By: _____
9 Plaintiff, ANTHONY E. HELD,
Ph.D., P.E.

By: _____
Defendant, ADVANCE WATCH CO.,
LTD.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11 Date: 6/16/06
12 HIRST & CHANLER LLP

Date: _____
SHEPPARD MULLIN RICHTER &
HAMPTON LLP

13 *[Signature]*
14 By: _____
15 David Lavine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Michelle Hirth
Attorneys for Defendant
ADVANCE WATCH COMPANY, LTD.

17 **IT IS SO ORDERED.**

18 Date: _____

19 JUDGE OF THE SUPERIOR COURT

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1 **14. 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.

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: JUNE 16, 2008

7
8 By: _____
9 Plaintiff, ANTHONY E. HELD,
Ph.D., P.E.

By:  _____
Defendant, ADVANCE WATCH CO.,
LTD.

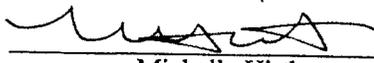
10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

11 Date: _____
12 HIRST & CHANLER LLP

Date: JUNE 16, 2008
13 SHEPPARD MULLIN RICHTER &
HAMPTON LLP

14 By: _____
15 David Lavine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By:  _____
Michelle Hirth
Attorneys for Defendant
ADVANCE WATCH COMPANY, LTD.

16
17 **IT IS SO ORDERED.**

18 Date: _____

19 _____
JUDGE OF THE SUPERIOR COURT

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