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18 Attorneys for Defendant  
19 DICKSON'S, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE CITY AND COUNTY OF ALAMEDA  
22 UNLIMITED CIVIL JURISDICTION

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

Case No. RG08405673

24 Plaintiff, )

25 v. )

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

26 DICKSONS, INC.; and DOES 1 through 150, )  
27 inclusive, )

28 Defendants. )  
\_\_\_\_\_ )

1       **1. INTRODUCTION**

2           **1.1 Anthony E. Held, Ph.D., P.E., and Dickson's, Inc.**

3           This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.  
4           (“Dr. Held” or “Plaintiff”) and defendant Dickson’s, Inc. (“Dickson’s” or “Defendant”) with Dr.  
5           Held and Dickson’s collectively referred to as the “parties.”

6           **1.2 Plaintiff Dr. Anthony Held**

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

10          **1.3 Defendant Dickson’s**

11          Dickson’s 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, California Health &  
13          Safety Code §25249.5 *et seq.* (Proposition 65).

14          **1.4 General Allegations**

15          Dr. Held alleges that Dickson’s has manufactured, distributed and/or sold certain sporting  
16          toys/children’s items containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of  
17          California without providing clear and reasonable warnings as required by Proposition 65. DEHP  
18          shall be referred to hereinafter as the “listed chemical.”

19          **1.5 Product Description**

20          The products that are covered by this consent judgment are defined as follows: sporting  
21          toys/children’s items sold in California containing the listed chemical, such as the *Smile God Loves*  
22          *You Ball (#6 03799 13351 7)*. All sporting toys/children’s items are referred to hereinafter as the  
23          “Products”.

24          **1.6 Notice of Violation**

25          On May 23, 2008, Dr. Held served Dickson’s and the Office of the California Attorney  
26          General of the State of California, all California counties’ District Attorneys and all City Attorneys  
27          of California cities with populations exceeding 750,000, (collectively, “Public Enforcers”) with a  
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1 document entitled "60-Day Notice of Violation" (the "Notice") that provided Dickson's and Public  
2 Enforcers with notice of alleged violations of California Health & Safety Code §25249.6 in  
3 connection with the sale of the Products containing the listed chemical. To the best of the parties'  
4 knowledge, no Public Enforcer has diligently prosecuted any of the allegations set forth in the  
5 Notice.

6 **1.7 Complaint**

7 On August 22, 2008, Dr. Held filed a complaint ("Complaint" or "Action") in the Superior  
8 Court for the County of Alameda against Dickson's and Does 1 through 150, alleging violations of  
9 California Health & Safety Code §25249.6 based on Dickson's failure to give clear and reasonable  
10 warning prior to causing alleged exposures to the listed chemical contained in the Products.

11 **1.8 No Admission**

12 Dickson's denies the material, factual and legal allegations contained in Dr. Held's Notice  
13 and Complaint and maintains that all Products that it has sold and distributed in California have  
14 been and are in compliance with all laws. Nothing in this consent judgment shall be construed as an  
15 admission by Dickson's of any fact, finding, issue of law, or violation of law, nor shall compliance  
16 with this consent judgment constitute or be construed as an admission by Dickson's of any fact,  
17 finding, conclusion, issue of law, or violation of law, such being specifically denied by Dickson's.  
18 In order to avoid the costs and expenses of litigation and without admitting liability or wrongdoing,  
19 Dickson's has elected to resolve this matter by settlement and on the terms set forth herein.  
20 However, this section shall not diminish or otherwise affect Dickson's obligations, responsibilities,  
21 and duties under this consent judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this consent judgment only, the parties stipulate that this Court has  
24 jurisdiction over Dickson's as to the allegations contained in the Complaint, that venue is proper in  
25 the County of Alameda and that this Court has jurisdiction to enter and enforce this consent  
26 judgment as a full and final binding resolution of all claims which were or could have been raised in  
27 the Complaint against Dickson's based on the facts alleged therein and in the Notice.

1           **1.10 Effective Date**

2           For purposes of this consent judgment, the term “Effective Date” shall mean January 2,  
3           2009.

4           **2. INJUNCTIVE RELIEF: REFORMULATION**

5           **2.1 Reformulation Commitment**

6           Dickson’s hereby commits that one hundred percent (100%) of the Products that it sells  
7           within the State of California commencing after the Effective Date shall qualify as Reformulated  
8           Products pursuant to Section 2.2, below. Dickson’s represents that, as a direct result of Dr. Held’s  
9           Notice issued on May 23, 2008, it began to immediately implement a process for the reformulation  
10          of the Products.

11          **2.2 Reformulation Standards**

12          Reformulated Products are defined as those containing less than 1,000 ppm of listed  
13          chemical, as measured by (a) Environmental Protection Agency (“EPA”) testing methodologies  
14          3580A and 8270C; or (b) any test method acceptable to one or more federal or California State  
15          agencies.

16          **3. MONETARY PAYMENTS**

17          **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

18          Pursuant to Health & Safety Code §25249.7(b), Dickson’s shall pay \$4,000.00 in civil  
19          penalties.

20          Civil penalties are to be apportioned in accordance with California Health & Safety Code  
21          §25192, with 75% of these funds remitted to the State of California’s Office of Environmental  
22          Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony  
23          Held as provided by California Health & Safety Code §25249.12(d). Dickson’s shall issue two  
24          separate checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in  
25          Trust For OEHHA” in the amount of \$3,000.00 representing 75% of the total penalty; and (b) one  
26          check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$1,000.00 representing  
27          25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,  
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1 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose  
2 information shall be provided five calendar days before the payment is due. Payment shall be  
3 delivered to Dr. Held's counsel within ten days of the Effective Date, at the following address:

4 HIRST & CHANLER LLP  
5 Attn: Proposition 65 Controller  
6 455 Capitol Mall, Suite 605  
7 Sacramento, CA 95814

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

8 **4.1 Attorney Fees and Costs.**

9 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
11 this fee issue to be resolved after the material terms of the agreement had been settled. Dickson's  
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
13 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to  
14 Dr. Held and his counsel under general contract principles and the private attorney general doctrine  
15 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the  
16 mutual execution of this agreement, Dr. Held's compliance with California Health & Safety Code  
17 §25249.7(f), submission of this Consent Judgment to the Court for its consideration and approval,  
18 and appearance at one court hearing to urge approval of the Consent Judgment. Dickson's shall  
19 reimburse Dr. Held and his counsel a total of \$21,000 for fees and costs incurred as a result of such  
20 activities, including investigating, bringing this matter to Dickson's' attention, litigating and  
21 negotiating a settlement in the public interest and presenting this settlement to the California  
22 Attorney General and the Court. Dickson's shall issue a separate 1099 for fees and costs (EIN: 20-  
23 3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered within  
24 ten days of the Effective Date to the following address:

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

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

Pursuant to CCP §§1021 and 1021.5, the parties further agree that if the California Attorney General raises objections to this Consent Judgment or any portion of it, or if the Court requires more submissions than Plaintiff’s initial motion for approval of the consent judgment, and/or more than one hearing, additional written submissions, hearings or both, Dickson’s will reimburse Dr. Held and his counsel for their reasonable fees and costs incurred in addressing such objections or responding to additional such requests by the Court in an amount not to exceed \$3,000.

Reimbursement of such additional fees and costs shall be due within ten calendar days after receipt of a billing statement from Dr. Held (“Additional Fee Claim”) which Dr. Held or his counsel shall send to Dickson’s counsel after entry of judgment. Payment of the Additional Fee Claim shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the following address:

HIRST & CHANLER LLP  
Attn: Proposition 65 Controller  
455 Capitol Mall, Suite 605  
Sacramento, CA 95814

Dickson’s has the right to object to such billing statement and may submit the resolution of this issue to Judicial Arbitration Mediation Service (“JAMS”), which shall apply its streamlined rules and procedures, provided that an arbitration notice, notice of objection, or decision to arbitrate is received by Dr. Held no later than ten calendar days after Dickson’s receives the Additional Fee Claim. In any such proceeding, the only issues to be briefed or argued by the parties shall be whether the condition of this section for the payment of an Additional Fee Claim has been met, and the reasonableness of the fees claimed, and the matter shall be decided by the arbitrator based on papers submitted. Dr. Held’s Additional Fee Claim, and his claim for “fees for fees” or costs incurred in the arbitration, if any, shall be submitted to and determined by the arbitrator in a single hearing. If an arbitration notice is not filed with JAMS in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP §1021.5 and this consent judgment to recover additional attorney fees and costs incurred as set forth in this paragraph.

1       **5. RELEASE OF ALL CLAIMS**

2               **5.1 Effect of Consent Judgment**

3               As to the Products and the listed chemical, this consent judgment is a full, final, and binding  
4 resolution between Dr. Held, acting on behalf of himself and, as to those matters raised in the  
5 Notice, on behalf of the general public in the public interest pursuant to Health and Safety Code  
6 section 25249.7(d), and Dickson’s and Defendant Releasees (as that term is defined in Section 5.2  
7 below) for any matters raised in this action, or any matters that reasonably could have been raised in  
8 this action. As to the Products, compliance with the terms of this consent judgment resolves any  
9 issue, now and in the future, concerning compliance by Dickson’s and Defendant Releasees with  
10 existing requirements of Proposition 65 to provide clear and reasonable warnings about exposure to  
11 DEHP.

12               **5.2 Dr. Held’s Release of Dickson’s**

13               In further consideration of the promises and agreements herein contained, and for the  
14 payments to be made pursuant to Sections 3 and 4, and as to plastic balls and ball and bat sets only,  
15 Dr. Held on behalf of himself, his past and current agents, representatives, attorneys, successors,  
16 and/or assignees, and on behalf of the general public, hereby waives all rights to institute or  
17 participate in, directly or indirectly, any form of legal action and releases all claims including,  
18 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
19 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
20 investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or  
21 unknown, fixed or contingent (collectively “Claims”), that were brought or could have been brought  
22 against Dickson’s or its parents, subsidiaries or affiliates, and all of their customers, distributors,  
23 wholesalers, retailers, licensors, licensees, or any other person in the course of doing business, and  
24 the successors and assigns of any of them, who may use, maintain, manufacture, distribute,  
25 advertise, market or sell Products, and the officers, directors, managers, employees, members,  
26 shareholders, agents, insurers and representatives of each of them (collectively “Defendant  
27 Releasees”) in this Action. The Parties further understand and agree that this release shall not  
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1 extend upstream to any entities that manufactured the Products for Dickson's or any component  
2 parts thereof or to any distributors or suppliers who sold the Products or any component parts  
3 thereof to Dickson's.

4 Dr. Held also, in his individual capacity only, provides a general release herein which shall  
5 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
6 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr.  
7 Held of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of  
8 the subject matter of the Notice. Dr. Held acknowledges that he is familiar with Section 1542 of the  
9 California Civil Code, which provides as follows:

10 A general release does not extend to claims which the creditor does  
11 not know or suspect to exist in his favor at the time of executing the  
12 release, which if known by him must have materially affected his  
13 settlement with the debtor.

13 Dr. Held, in his individual capacity only, expressly waives and relinquishes any and all  
14 rights and benefits which he may have under, or which may be conferred on him by the provisions  
15 of Section 1542 of the California Civil Code as well as under any other state or federal statute or  
16 common law principle of similar effect, to the fullest extent that he may lawfully waive such rights  
17 or benefits pertaining to the released matters. In furtherance of such intention, the release hereby  
18 given shall be and remain in effect as a full and complete release notwithstanding the discovery or  
19 existence of any such additional or different claims or facts arising out of the released matters.

20 **5.3 Dickson's' Release of Dr. Held**

21 Dickson's waives any and all claims against Dr. Held, his attorneys, and other  
22 representatives for any and all actions taken or statements made (or those that could have been  
23 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of  
24 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter,  
25 and/or with respect to the Products.  
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**6. COURT APPROVAL**

This consent judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties. If the Court does not approve the consent judgment, the parties shall meet and confer as to (and jointly agree on) whether to modify the language or appeal the ruling. If the parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the trial court’s calendar. In the event that this consent judgment is entered by the Court and subsequently overturned by any appellate court or the motion to approve is not ultimately granted, any monies that have been provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision becoming final. Additionally, the parties shall meet and confer as to (and jointly agree on) whether to modify the terms of the consent judgment. If the parties do not jointly agree on a course of action to take, then the case shall proceed in its normal course on the trial court’s calendar.

**7. SEVERABILITY**

If, subsequent to the execution of this consent judgment, any of the provisions of this consent judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**8. ENTIRE AGREEMENT**

This consent judgment contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

**9. GOVERNING LAW**

The terms of this consent judgment shall be governed by the laws of the State of California and apply within the State of California.

1       **10.    MODIFICATION OF CONSENT JUDGMENT**

2           This Consent Judgment may be modified by written agreement of Dr. Held and Dickson’s,  
3       or upon motion of Dr. Held or Dickson’s as provided by law. It is the intention of this Consent  
4       Judgment that Dickson’s present and future obligations concerning distribution of Products  
5       containing the listed chemical should not remain in effect if Proposition 65 is determined by a court,  
6       legislature or other appropriate regulatory authority to no longer apply to the Products and/or the  
7       listed chemical.

8           It is the intent of this Consent Judgment that no other Proposition 65 settlement shall place  
9       Dickson’s at a competitive disadvantage with other entities that sell similar products. Should the  
10       provisions of any consent judgment that are approved by a Superior Court in California in a  
11       Proposition 65 action be less stringent in their reformulation standards than those contained in  
12       Section 2.1, above, Dickson’s may seek a modification of this Consent Judgment to the extent any  
13       of Dickson’s Products are so affected.

14          In the event that Dickson’s unsuccessfully seeks such modification through a formal motion,  
15       Held shall be entitled to reimbursement of his reasonable attorneys’ fees and costs in connection  
16       with the modification process. In the event that Dickson’s successfully seeks such modification  
17       through a formal motion, Held shall be entitled to reimbursement only if his opposition to such  
18       motion had a substantial basis in law or fact and was raised in objective good faith. The issue of  
19       entitlement to attorneys’ fees and costs, but not the amounts, shall be submitted to the Court that  
20       decides such a motion. The amounts of such fees and costs shall be submitted to and decided by the  
21       same arbitration process provided in section 4.2 of this Consent Judgment.

22       **11.    NOTICES**

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

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1 To Dickson's:

2 Bruce Nye, Esq.  
3 ADAMS | NYE | TRAPANI | BECHT LLP  
4 222 Kearny Street, Seventh Floor  
5 San Francisco, CA 94108

6 To Dr. Held:

7 Proposition 65 Coordinator  
8 HIRST & CHANLER, LLP  
9 2560 Ninth Street  
10 Parker Plaza, Suite 214  
11 Berkeley, CA 94710-2565

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

14 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This consent judgment may be executed in counterparts and by facsimile, each of which  
16 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
17 same document.

18 **13. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

21 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

22 Dr. Held and Dickson's agree to mutually employ their best efforts to support the entry of  
23 this agreement as a consent judgment by the trial court and defend the agreement against any  
24 appellate review. The Parties acknowledge that, pursuant to California Health & Safety Code  
25 §25249.7, a noticed motion is required to obtain judicial approval of this consent judgment.  
26 Accordingly, Dr. Held agrees to file a motion to approve the consent judgment, and Dickson's  
27 agrees to support it.

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**15. 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.

<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>12-31-08</u></p> <p>By: <u>James M. Ross</u> Defendant, DICKSON'S, INC.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">HIRST &amp; CHANLER LLP</p> <p>By: _____ David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">ADAMS   NYE   TRAPANI   BECHT LLP</p> <p>By: _____ Bruce Nye Attorneys for Defendant DICKSON'S, INC.</p>

**IT IS SO ORDERED.**

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

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

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15. **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.

<b>AGREED TO:</b> Date: _____ By: _____ Plaintiff, ANTHONY E. HELD, Ph.D., P.E.	<b>AGREED TO:</b> Date: _____ By: _____ Defendant, DICKSON'S, INC.
<b>APPROVED AS TO FORM:</b> Date: <u>January 5, 2009</u> FIRST & CHANLER LLP By:  David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.	<b>APPROVED AS TO FORM:</b> Date: _____ ADAMS   NYE   TRAPANI   BECHT LLP By: _____ Bruce Nye Attorneys for Defendant DICKSON'S, INC.

**IT IS SO ORDERED.**

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

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

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**15. 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.

<p><b>AGREED TO:</b></p> <p style="text-align: center;"><b>APPROVED</b> <i>By Anthony E Held at 12:15 pm, 1/6/09</i></p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> Plaintiff, ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, DICKSON'S, INC.</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">HIRST &amp; CHANLER LLP</p> <p>By: _____ David R. Bush Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p style="text-align: center;">ADAMS   NYE   TRAPANI   BECHT LLP</p> <p>By: _____ Bruce Nye Attorneys for Defendant DICKSON'S, INC.</p>

**IT IS SO ORDERED.**

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

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