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13 Attorneys for Defendant
THE HADDAD APPAREL GROUP, LTD.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE CITY COUNTY OF SAN FRANCISCO

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

19 Plaintiff,

20 v.

21 THE HADDAD APPAREL GROUP, LTD.; *et*
22 *al.*

23 Defendants.

Case No. CGC-09-488635

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and The Haddad Apparel Group, Ltd.**

3 This Stipulation and Proposed Consent Judgment (“Consent Judgment”) is entered into by
4 and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and defendant The
5 Haddad Apparel Group, Ltd. (“Defendant”), with Plaintiff Held and Defendant collectively referred
6 to herein as the “Parties” and individually as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Defendant employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code § 25249.5, *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that Defendant has manufactured, distributed and/or sold children’s PVC
17 jackets containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without
18 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to cause
19 cancer and birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: children’s
22 PVC jackets containing DEHP including, but not limited to, *Harley-Davidson Jacket Style 737429*
23 (*#6 33716 14710 5*). All such products containing DEHP are referred to hereinafter as the
24 “Products.”

25 **1.6 Notices of Violation**

26 Dr. Held asserts that on January 26, 2009, he served Defendant, the Office of the California
27 Attorney General, all California counties’ District Attorneys and all City Attorneys of California
28 cities with populations exceeding 750,000, (collectively “Public Enforcers”) with a document

1 entitled "60-Day Notice of Violation" (the "Notice") that provided Defendant and Public Enforcers
2 with notice of alleged violations of Proposition 65 for alleged failure to warn consumers that
3 children's PVC jackets containing DEHP that Defendant sold allegedly exposed users in California
4 to DEHP. To the best of Parties' knowledge, no Public Enforcer has diligently prosecuted any of
5 the allegations set forth in the Notice.

6 **1.7 Complaint**

7 On May 22, 2009, Dr. Held, who was and is acting in the interest of the general public in
8 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the City
9 and County of San Francisco against Defendant and Does 1 through 150, alleging violations of
10 Proposition 65 based on the allegations in the Notice.

11 **1.8 No Admission**

12 Defendant denies the material, factual and legal allegations contained in Dr. Held's Notice
13 of Violation and Complaint and denies that any Products that it has sold and distributed in
14 California do not comply with Proposition 65 or any other law. Nothing in this Consent Judgment
15 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
16 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by
17 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
18 denied by Defendant. In order to avoid the costs and expense of litigation and without admitting
19 liability or wrongdoing, Defendant has elected to resolve this matter by settlement and on the terms
20 set forth herein. However, this section shall not diminish or otherwise affect Defendant's
21 obligations, responsibilities, 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 Defendant as to the allegations contained in the Complaint, that venue is proper in
25 the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce this
26 Consent Judgment as a full and final binding resolution of all claims which were or could have been
27 raised in the Complaint against Defendant based on the facts alleged therein and in the Notice.
28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31, 2009.

3 **2. INJUNCTIVE RELIEF: REFORMULATION IF THE PRODUCT**
4 **IS RE-INTRODUCED FOR SALE IN CALIFORNIA**

5 As a result of the Notice, Defendant represents that it has no plans to re-introduce the
6 Products for sale into California. Defendant agrees that if it does re-introduce the Products for sale
7 into California, it will not do so unless such Products contain less than 1,000 (one thousand) parts
8 per million ("ppm") of DEHP when analyzed pursuant to: Environmental Protection Agency
9 ("EPA") testing methodologies 3580A and 8270C, or other comparable methodologies recognized
10 and accepted by one or more federal and/or state agencies, including the Consumer Product Safety
11 Commission. This reformulation requirement shall not apply to any Products manufactured by
12 Defendant prior to the Effective Date.

13 **3. MONETARY PAYMENTS**

14 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

15 **3.1.1** In settlement of all claims related to the Products and Listed Chemical
16 referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety Code
17 § 25249.7(b), Defendant shall pay \$2,000 in civil penalties.

18 **3.1.2** Civil penalties are to be apportioned in accordance with California Health &
19 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
20 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
21 remitted to Anthony Held as provided by California Health & Safety Code § 25249.12(d).

22 Defendant shall issue two separate checks for the penalty payment: (a) one check made
23 payable to "Hirst & Chanler LLP in Trust for OEHHA" in the amount of \$1,500, representing 75%
24 of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the
25 amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the
26 above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)
27 Anthony Held, whose information shall be provided five calendar days before the payment is due.
28

1 **3.1.3** Payment Timing. Not later than five (5) days following the execution of this
2 Consent Judgment by both parties, the penalty payment shall be made by Defendant to either Hirst
3 & Chanler or Hunton & Williams, at the sole election of Defendant, to be held in a client Trust
4 Account. If the penalty payment is made to Hunton & Williams, Hunton & Williams shall provide
5 written notice to Hirst & Chanler, within 2 business days of the receipt of the penalty payment.
6 Such penalty payment shall remain in the Trust Account until this Consent Judgment has been
7 entered by the Court.

8 If the penalty payment is held by Hirst & Chanler, it may be disbursed upon entry of
9 this Consent Judgment and, if the penalty payment is held by Hunton & Williams, it shall be
10 delivered to the following address within five days of entry of this Consent Judgment:

11 Hirst & Chanler LLP
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

14 **4 REIMBURSEMENT OF FEES AND COSTS**

15 **4.1 Attorney Fees and Costs**

16 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
18 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
19 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
20 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
21 Dr. Held and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure Section § 1021.5. Defendant shall reimburse Dr.
23 Held and his counsel a total of \$22,000 for fees and costs incurred as a result of investigating,
24 litigating and negotiating a settlement in the public interest. Defendant shall issue a separate 1099
25 for fees and costs to "Hirst & Chanler LLP" (EIN: 20-3929984). Not later than five (5) days
26 following the execution of this Consent Judgment by both parties, the fee and cost payment shall be
27 made by Defendant to either Hirst & Chanler or Hunton & Williams to be held in a client Trust
28 Account. If the fee and cost payment is made to Hunton & Williams, Hunton & Williams shall

1 provide written notice to Hirst & Chanler, within 2 business days of the receipt of the fee and cost
2 payment. Such fee and cost payment shall remain in the Trust Account until this Consent Judgment
3 has been entered by the Court.

4 Subject to the provisions below, if the fee and cost payment is held by Hirst & Chanler, it
5 may be disbursed upon entry of this Consent Judgment and, if the fee and cost payment is held by
6 Hunton & Williams, it shall be delivered to the following address within five (5) days of entry of
7 this Consent Judgment:

8 Hirst & Chanler LLP
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

13 The foregoing notwithstanding, should the Court enter the Consent Judgment over an
14 objection, the payments made into a Trust Account required under Sections 3 and 4 shall be paid
15 within five (5) days after the Judgment becomes final, including any appeal. However, should the
16 Parties revise the Consent Judgment prior to its entry by the Court in response to an objection such
17 that the objection is withdrawn prior to entry of the Consent Judgment, the timing of the payments
18 shall be due as if no objection has been filed.

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Dr. Held's Release of Defendant**

21 In further consideration of the promises and agreements herein contained, and for the
22 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current
23 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
24 public only as to the Products, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims including, without limitation, all actions,
26 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
27 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
28 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
(collectively "Claims"), that were brought or could have been brought against Defendant or its
parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers

1 (including Burlington Coat Factory), licensors, licensees, or any other person in the course of doing
2 business, and the successors and assigns of any of them, who may use, maintain, manufacture,
3 distribute, advertise, market or sell Products, and the officers, directors, managers, employees,
4 members, shareholders, agents, insurers and representatives of each of them (collectively "Defendant
5 Releasees") in this Action. This release is limited to, but is intended to be a full, final, and binding
6 resolution of, those Claims that arise from or relate to facts alleged in the Notice and the Complaint,
7 as against Defendant and Defendant Releasees, concerning Defendant's alleged failure to warn about
8 exposures to DEHP contained in the Products.

9 Dr. Held also, on behalf of himself, his past and current agents, representatives, attorneys,
10 successors, and/or assignees, and in his individual capacity only, provides a general release herein
11 which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of Dr. Held
12 against Defendant and Defendant Releasees of any nature, character or kind, known or unknown,
13 suspected or unsuspected, arising under Proposition 65 or an alleged failure to provide warnings for
14 exposures to DEHP from the Products manufactured, distributed or sold by Defendant. Dr. Held
15 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as
16 follows:

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

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

27 Notwithstanding the foregoing, this release shall not limit or affect Dr. Held's right to
28 enforce the terms of the Consent Judgment.

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5.2 Effect of Consent Judgment

Compliance with the terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by Defendant and Defendant Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by Defendant.

5.3 Defendant's Release of Dr. Held

Defendant waives any and all Claims against Dr. Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products. Defendant provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all released Claims described herein that it may have against Dr. Held, of any nature, character or kind, known or unknown, and suspected or unsuspected. Defendant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

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

1 Notwithstanding the foregoing, this release shall not limit or affect Defendant's right to
2 enforce the terms of this Consent Judgment.

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4 **6. COURT APPROVAL**

5 Notwithstanding Section 1.10, this Consent Judgment is not effective until it is approved and
6 entered by the Court and shall be null and void if, for any reason, it is not approved and entered by
7 the Court within one year after it has been fully executed by all Parties. If the Court does not
8 approve the Consent Judgment, the Parties shall meet and confer as to (and jointly agree on)
9 whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a course
10 of action to take, then the case shall proceed in its normal course on the trial court's calendar, and
11 any monies that have been provided to Plaintiff, or his counsel, pursuant to Section 3 and/or Section
12 4 above, shall be refunded within thirty (30) days of Defendant providing written notice thereof. In
13 the event that this Consent Judgment is entered by the Court and subsequently overturned by any
14 appellate court, any monies that have been provided to Plaintiff, or his counsel pursuant to Section 3
15 and/or Section 4 above, shall be refunded within fifteen (15) days of the appellate decision
16 becoming final. If the Court's approval is ultimately overturned by an appellate court, the Parties
17 shall meet and confer as to (and jointly agree on) whether to modify the terms of the Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
19 proceed in its normal course on the trial court's calendar.

20 **7. SEVERABILITY**

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

24 **8. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
2 to exist or to bind any of the Parties.

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4 **9. GOVERNING LAW**

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

10 **10. NOTICES**

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

15 To Defendant:

16 Malcolm C. Weiss
17 Catherine Allen
18 Ian M. Forrest
19 HUNTON & WILLIAMS LLP
20 550 South Hope Street, Suite 2000
21 Los Angeles, CA 90071

22 To Dr. Held:

23 Proposition 65 Controller
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 **11. 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.

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7 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

11 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
12 noticed motion is required to obtain judicial approval of this Consent Judgment. Dr. Held and
13 Defendant agree to mutually employ their best efforts to support the entry of this agreement as a
14 Consent Judgment by the trial court and defend the agreement against any appellate review.
15 Accordingly, Dr. Held agrees to file a motion to approve the Consent Judgment, and Defendant
16 agrees to support it.

17 **14. MODIFICATION AND ENFORCEMENT**

18 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
19 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
20 any Party and entry of a modified consent judgment by the Court. In the event that, after the
21 Parties' execution of this Consent Judgment: (1) a dispute arises with respect to any provisions of
22 this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the
23 prevailing Party shall be entitled to reasonable attorneys' fees and costs.

24 **15. EFFECT OF CONSENT JUDGMENT**

25 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
26 Parties and their respective successors and assigns.

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16. 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:

APPROVED
By Anthony E Held at 10:54 am, 7/20/09

Date: _____

Date: 7/24/09

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

By: Marc Weintraub
Marc Weintraub, Chief Executive Officer
THE HADDAD APPAREL GROUP,
LTD.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT