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5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
HASELSON INTERNATIONAL TRADING,
INC., *et al.*,
Defendant.

Case No. CGC-08-481439

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

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Haselson Trading, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Held”) and Haselson International Trading, Inc. (hereinafter “Haselson”), with Held
5 and Haselson together referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Haselson employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Haselson has manufactured, distributed, and/or sold in the State of
15 California children’s vinyl zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is
16 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
17 & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of
18 California to cause birth defects and other reproductive harm. DEHP is referred to herein as the
19 “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as children’s vinyl
22 zipper pulls containing di(2-ethylhexyl)phthalate including, but not limited to, components of the
23 *Roadblock Hooded Sweatshirt, HGrey (#7 04194 23840 8)*. All such products containing
24 DEHP are referred to hereinafter as the “Products”.

25 **1.6 Notice of Violation**

26 On January 26, 2009, Held served Haselson Trading, Inc., Burlington Coat Factory
27 Warehouse Corporation, and various public enforcement agencies with a “60-Day Notice of
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1 Violation” (the “Notice”) that provided Haselson with notice of alleged violations of Health &
2 Safety Code §25249.6 for its failure to warn consumers that the Products that Haselson sold
3 exposed users in California to the Listed Chemical.

4 **1.7 Complaint**

5 On August 5, 2009, Dr. Held, who was and is acting in the interest of the general public in
6 California, filed a second amended complaint in case number CGC-08-481439 of the San
7 Francisco Superior Court (“Complaint”), adding Haselson as a defendant and alleging violations
8 of Health & Safety Code §25249.6 by Haselson based on the alleged exposures to DEHP
9 contained in the Products manufactured, distributed and/or offered for sale in California by
10 Haselson.

11 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has
22 jurisdiction over Haselson as to the allegations contained in the Complaint, that venue is proper in
23 the County of San Francisco and that this Court has jurisdiction to enter and enforce the
24 provisions of this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean November
27 30, 2009.
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1 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2 **2.1 Product Warnings**

3 Commencing on the Effective Date, Haselson shall not sell, ship, or offer to be shipped
4 for sale in California any Product unless such Products are sold or shipped with one of the clear
5 and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to
6 Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

7 Each warning shall be prominently placed with such conspicuousness as compared with
8 other words, statements, designs, or devices as to render it likely to be read and understood by an
9 ordinary individual under customary conditions before purchase or use.

10 **(a) Retail Store Sales.**

11 **(i) Product Labeling.** Haselson may affix a warning to the
12 packaging, labeling, or directly on each Product sold in retail outlets in California by Haselson or
13 its agents, that states:

14 **WARNING:** This product contains DEHP, a phthalate
15 chemical known to the State of California to
16 cause birth defects and other reproductive
 harm.

17 **(ii) Point-of-Sale Warnings.** Alternatively, Haselson may provide
18 warning signs in the form below to its customers in California with instructions to post the
19 warnings in close proximity to the point of display of the Products.

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

23 Where more than one Product is sold in proximity to other like items or to those that do
24 not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following
25 statement must be used:¹

26 _____
27 ¹For purposes of the consent judgment, "sold in proximity" shall mean that the Product and another product are
28 offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not

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WARNING: These products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales. In the event that Haselson sells Products via mail order catalog or internet to customers located in California after the Effective Date that are not Reformulated Products, Haselson shall provide a warning for Products sold via mail order catalog or the Internet to California residents: (1) in the mail order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog must be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Haselson may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a phthalate

_____ reasonably determine which of the two products is subject to the warning sign.

1 chemical known to the State of California
2 to cause birth defects and other
3 reproductive harm.

4 The designated symbol must appear on the same page and in close proximity to the
5 display and/or description of the Product. On each page where the designated symbol appears,
6 Haselson must provide a header or footer directing the consumer to the warning language and
7 definition of the designated symbol.

8 If Haselson elects to provide warnings in the mail order catalog, then the warnings must
9 be included in all catalogs offering to sell one or more Products printed after the Effective Date.

10 **(ii) Internet Website Warning.** A warning may be given in
11 conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the
12 same web page on which the Product is displayed; (b) on the same web page as the order form for
13 the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
14 displayed to a purchaser during the checkout process. The following warning statement shall be
15 used and shall appear in any of the above instances adjacent to or immediately following the
16 display, description, or price of the Product for which it is given in the same type size or larger
17 than the Product description text:

18 **WARNING:** This product contains DEHP, a phthalate
19 chemical known to the State of California to
20 cause birth defects and other reproductive
21 harm.

22 Alternatively, the designated symbol may appear adjacent to or immediately following the
23 display, description, or price of the Product for which a warning is being given, provided that the
24 following warning statement also appears elsewhere on the same web page, as follows:

25 **WARNING:** Products identified on this page with the
26 following symbol contain DEHP, a
27 phthalate chemical known to the State of
28 California to cause birth defects and other
reproductive harm: ▼.

1 **2.2 Exceptions To Warning Requirements**

2 The warning requirements set forth in Section 2.1 shall not apply to:

- 3 (i) Any Product manufactured or otherwise distributed by Haselson prior to
4 the Effective Date; or
5 (ii) Reformulated Products (as defined in Section 2.3 below).

6 **2.3 Reformulation Standards**

7 Reformulated Products are defined as those Products containing less than or equal to
8 1,000 parts per million (“ppm”) of the Listed Chemical. The warnings required pursuant to
9 Section 2.1 above shall not be required for Reformulated Products.

10 **2.4 Past and Future Reformulation Steps**

11 Except as otherwise provided for in this Agreement, Haselson shall, after the Effective
12 Date, only manufacture Products for sale in California that qualify as Reformulated Products.

13 **3. MONETARY PAYMENTS**

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

15 In settlement of all the claims referred to in this Consent Judgment against it, Haselson
16 shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health &
17 Safety Code §25192, with 75% of these funds remitted to the State of California’s Office of
18 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held
19 as provided by California Health & Safety Code §25249.12(d). Haselson shall issue two separate
20 checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for
21 the State of California’s Office of Environmental Health Hazard Assessment (OEHHA) in the
22 amount of \$1,500, representing 75% of the total penalty, and (b) one check to Hirst & Chanler
23 LLP in Trust for Held in the amount of \$500, representing 25% of the total penalty. Two
24 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,
25 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be
26 furnished, upon request, five calendar days before payment is due. The payments shall be
27 delivered on or before the Effective Date to the following address:
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1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

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

5 **4.1 Attorney Fees and Costs**

6 The Parties acknowledge that Held and his counsel offered to resolve this dispute by
7 negotiating the material terms of the settlement prior to negotiating terms on the amount of fees
8 and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material
9 terms of the agreement had been settled. After the other settlement terms had been finalized, the
10 Parties attempted to (and did) reached an accord on the compensation due to Held and his counsel
11 under general contract principles and the private attorney general doctrine codified at California
12 Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of
13 this agreement. Haselson shall reimburse Held and his counsel for fees and costs incurred as a
14 result of investigating, bringing this matter to Haselson's attention, and litigating and negotiating
15 a settlement in the public interest. Haselson shall pay Held and his counsel \$18,000 for fees and
16 costs incurred as a result of investigating, bringing this matter to Haselson's attention, and
17 litigating and negotiating a settlement in the public interest. Haselson shall issue a separate 1099
18 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP"
19 and shall be delivered on or before the Effective Date to the following address:

20 Hirst & Chanler LLP
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

23 **5. RELEASE OF ALL CLAIMS**

24 **5.1 Release of Haselson and Downstream Customers**

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
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1 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
2 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
3 form of legal action and releases all claims, including, without limitation, all actions, and causes
4 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
5 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
6 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
7 (collectively "Claims"), that were brought or could have been brought against Haselson and its
8 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
9 shareholders, agents, employees, and sister and parent entities and each of Haselson's
10 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,
11 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries,
12 and their respective officers, directors, attorneys, representatives, shareholders, agents, employees
13 and sister and parent entities, including without limitation Burlington Coat Factory Warehouse
14 Corporation (collectively "Releasees") that arise under Proposition 65 or any other statutory or
15 common law Claims that could have been asserted including such Claims as relate to Haselson's
16 and each of its Releasees alleged failure to warn about exposures to or identification of the Listed
17 Chemical contained in the Products.

18 **5.2 Haselson's Release of Held**

19 Haselson waives any and all claims against Held, his attorneys and other representatives,
20 for any and all actions taken or statements made (or those that could have been taken or made) by
21 Held and his attorneys and other representatives, whether in the course of investigating claims or
22 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
23 the Products.

24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one-
27 hundred and eighty (180) days after it has been fully executed by all parties, in which event any
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1 monies that have been provided to Held, or his counsel pursuant to Section 3 and/or Section 4
2 above, shall be refunded within fifteen (15) days after receiving written notice from Haselson that
3 the one-year period has expired.

4 **7. SEVERABILITY**

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

8 **8. GOVERNING LAW**

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

15 **9. NOTICES**

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

20 **To Haselson:**

21 Avi Ades, President
22 Haselson International Trading, Inc.
23 350 5th Avenue, Suite 3615
New York, NY 10118

24 **With a copy to:**

25 Joshua Bloom
26 Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94101

1 **To Held:**

2 Proposition 65 Coordinator
3 Hirst & Chanler, LLP
4 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

7 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile, each of which
9 shall be deemed an original, and all of which, when taken together, shall constitute one and the
10 same documents.

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

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

14 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

15 The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed
16 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
17 obtaining such approval, Held, Haselson and their respective counsel agree to mutually employ
18 their best efforts to support the entry of this agreement as a Consent Judgment and obtain
19 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
20 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
21 papers, asserting any oral argument in support of the required motion for judicial approval, and
22 defending any appellate review of the Court's approval.

23 **13. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the parties
25 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful
26 motion of any party and entry of a modified consent judgment 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:** **APPROVED**
By Anthony Held at 2:17 pm, Oct 27, 2009
6 Date: _____

AGREED TO:
Date: _____

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

By: _____
Avi Ades, President
Defendant, HASELSON TRADING, INC.

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11 **APPROVED AS TO FORM:**
12 HIRST & CHANLER LLP
13 Date: Oct. 27, 2009

APPROVED AS TO FORM:
BARG COFFIN LEWIS & TRAPP, LLP
Date: _____

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

By: _____
JOSHUA A. BLOOM
Attorneys for Defendant
HASELTON TRADING, INC.

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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.

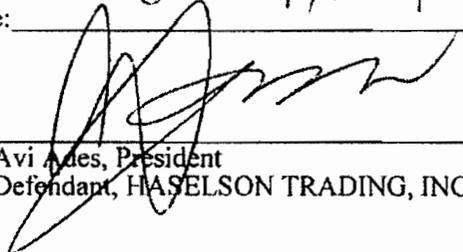
AGREED TO:

Date: _____

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

AGREED TO:

Date: Oct 27/2009

By: 
Avi Ates, President
Defendant, HASELSON TRADING, INC.

APPROVED AS TO FORM:

HIRST & CHANLER LLP

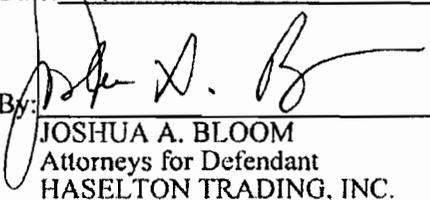
Date: _____

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

APPROVED AS TO FORM:

BARG COFFIN, LEWIS & TRAPP, LLP

Date: 10/27/09

By: 
JOSHUA A. BLOOM
Attorneys for Defendant
HASELTON TRADING, INC.