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

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

13 Plaintiff,

14 v.

15 S. GOLDBERG AND CO. INC.;
16 SGFOOTWEAR/MESSER GROUP, INC., *et al.*,

17 Defendants.

Case No. CGC-08-481439

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and SG Footwear**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”), and S. Goldberg and Co. Inc. d/b/a SG Footwear; SG Footwear/Messer
5 Group, Inc.; SG Import Services, Inc.; and SGI Apparel, Ltd. (hereinafter “SG Footwear”). Upon
6 entry of this Stipulation, additional companies which received a 60-Day Notice of Violation on or
7 after June 1, 2009, as discussed in Section 1.6 below, may opt-in to this agreement pursuant to
8 Section 13 below, and which shall thereafter be referred to as “Opt-In Defendants.” SG Footwear
9 and Opt-In Defendants shall be referred to collectively as “defendants.” Dr. Held, SG Footwear, and
10 Opt-In Defendants shall be referred to collectively as the “parties.”

11 **1.2 Plaintiff**

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

15 **1.3 Defendant**

16 Defendants each employ ten or more persons and are persons in the course of doing business
17 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
18 Safety Code §§ 25249.6 et seq. (Proposition 65).

19 **1.4 General Allegations**

20 Dr. Held alleges that defendants have manufactured, distributed and/or sold children’s shoes,
21 apparel and/or fashion accessories containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of
22 California without the requisite health hazard warnings. DEHP is listed pursuant to the Safe
23 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et*
24 *seq.* (“Proposition 65”), as chemicals known to the State of California to cause birth defects and other
25 reproductive harm. DEHP is referred to herein as the “Listed Chemical.”

26 **1.5 Product Description**

27 The products that are covered by this Consent Judgment are defined as follows: children’s
28 shoes, apparel and/or fashion accessories containing the Listed Chemical, in this instance more

1 particularly stated as *Barney Touch Down Shoes, Style AV11182AGN-T*. All such items shall be
2 referred to herein as the “Covered Products.”

3 **1.6 Notice of Violation**

4 On April 30, 2009, Dr. Held served SG Footwear and various public enforcement agencies
5 with a document entitled “60-Day Notice of Violation” that provided SG Footwear and such public
6 enforcers with notice that alleged that the company was in violation of California Health & Safety
7 Code §25249.6 for failing to warn consumers, workers and others that the Covered Products exposed
8 users in California to the Listed Chemical.

9 **1.7 Complaint**

10 On August 5, 2009, Dr. Held, who was and is acting in the interest of the general public in
11 California, filed a second amended complaint (“Complaint”) in case number CGC-08-481439 of the
12 San Francisco Superior Court, adding SG Footwear as a defendant and alleging violations of Health
13 & Safety Code §25249.6 by SG Footwear based on the alleged exposures to the Listed Chemical
14 contained in the Covered Products sold by SG Footwear.

15 **1.8 No Admission**

16 Each defendant denies the material, factual, and legal allegations contained in Dr. Held’s
17 Notice and Complaint and maintains that all products that it has sold and distributed in California
18 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
19 as an admission by defendants of any fact, finding, issue of law, or violation of law, nor shall
20 compliance with this Consent Judgment constitute or be construed as an admission by defendants of
21 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
22 defendants. However, this Section shall not diminish or otherwise affect each defendant’s
23 obligations, responsibilities and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the parties stipulate that this Court has
26 jurisdiction over defendants as to the allegations contained in the Complaint, that venue is proper in
27 the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 15,
3 2009 (or, for Opt-In Defendants, the Effective Date shall mean the date that the opt-in stipulation is
4 filed with the Court.)

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

6 **2.1 Product Warnings**

7 Commencing on the Effective Date, defendants shall not sell, ship, or offer to be shipped for
8 sale in California Covered Products containing the Listed Chemical unless such Covered Products are
9 sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b),
10 or comply with the reformulation standards set forth in Section 2.3. Each warning shall be
11 prominently placed with such conspicuousness as compared with other words, statements, designs, or
12 devices as to render it likely to be read and understood by an ordinary individual under customary
13 conditions before purchase or, for Covered Products shipped directly to an individual in California or
14 used in the workplace, before use. Any warning issued pursuant to this section 2.1 shall be provided
15 in a manner such that the consumer or user understands to which *specific* product the warning
16 applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.
17 Sections 2.1(a)-(b) describe each defendant’s options for satisfying its warning obligations
18 depending, in part, on the manner of sale. The following warnings will be applicable when a
19 Covered Product is sold either to consumers or in a business-to-business transaction:

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

21 **(i) Product Labeling.** From the Effective Date, except as provided by
22 Section 2.2, defendants may perform their warning obligations by ensuring that a warning is affixed
23 to the packaging, labeling, or directly on each Covered Product sold in retail outlets by defendants or
24 their agents in California, that states:

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

27 **(ii) Point-of-Sale Warnings.** Alternatively, defendants may perform their
28 warning obligations by ensuring that signs are posted at retail outlets in the State of California where

1 the Covered Products are sold. Point-of-sale warnings shall be provided through one or more signs
2 posted in close proximity to the point of display of the Covered Products that states:

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

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

8 **WARNING:** The following products contain DEHP, a
 phthalate chemical known to the State of
9 California to cause birth defects and other
 reproductive harm.

10 *[list products for which warning is required]*

11 **(b) Mail Order Catalog and Internet Sales.** Each defendant shall satisfy its
12 warning obligations for Covered Products sold via mail order catalog or the Internet to California
13 residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings
14 given in the mail order catalog or on the website shall identify the specific product to which the
15 warning applies as further specified in Sections 2.1(b)(i) and (ii).

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

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

22 Where it is impracticable to provide the warning on the same page and in the same location as
23 the display and/or description of the Product, defendants may utilize a designated symbol to cross
24 reference the applicable warning and shall define the term “designated symbol” with the following
25

26 ¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Covered Product and
27 another product are offered for sale close enough to each other that the consumer, under customary conditions
28 of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 language on the inside of the front cover of the catalog or on the same page as any order form for the
2 product(s):

3 **WARNING:** Certain products identified with this symbol
4 ▼ and offered for sale in this catalog contain
5 DEHP, a phthalate chemical known to the
6 State of California to cause birth defects and
7 other reproductive harm.

8 The designated symbol must appear on the same page and in close proximity to the display
9 and/or description of the product. On each page where the designated symbol appears, each
10 defendant must provide a header or footer directing the consumer to the warning language and
11 definition of the designated symbol. If a defendant elects to provide warnings in the mail order
12 catalog, then the warnings must be included in all catalogs offering to sell one or more Covered
13 Products printed after the Effective Date.

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

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

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

28 **WARNING:** Products identified on this page with the
 following symbol contain DEHP, a phthalate
 chemical known to the State of 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 any Reformulated
3 Products (as defined in Section 2.3 below).

4 **2.3 Reformulation Standards**

5 Reformulated Products are defined as those Covered Products containing less than or equal to
6 1,000 parts per million (“ppm”) of the Listed Chemical. Defendants shall use Environmental
7 Protection Agency (“EPA”) testing methodologies 3580A and 8720C (or any test method allowed by
8 any federal or state agency to determine the DEHP content in consumer products) to determine
9 whether the permitted level of the Listed Chemical has been exceeded in its Covered Products.

10 **2.4 Future Reformulation Commitments**

11 Defendants hereby commit that one hundred percent (100%) of the Covered Products that
12 they offer for sale in California after the Effective Date shall 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 claims related to DEHP and the Covered Products pursuant to Health &
16 Safety Code § 25249.7(b), SG Footwear shall pay \$6,000 in civil penalties. Civil penalties are to be
17 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
18 remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
19 and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health &
20 Safety Code §25249.12(d). SG Footwear shall issue two separate checks for the penalty payment:

21 (a) one check made payable to “Chanler Law Group in Trust for OEHHA” in the amount of \$4,500,
22 representing 75% of the total penalty; and (b) one check to “Chanler Law Group in Trust for Anthony
23 Held” in the amount of \$1,500, representing 25% of the total penalty. Two separate 1099s shall be
24 issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
25 0284486); and (b) Anthony Held, whose payment information shall be provided upon request five
26 calendar days before the payment is due.

27 Payment shall be delivered to Dr. Held’s counsel on or before the Effective Date, at the
28 following address:

1 Chanler Law Group
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 Dr. 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 this fee
8 issue to be resolved after the material terms of the agreement had been settled. SG Footwear then
9 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
10 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
11 Held and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the
13 mutual execution of this agreement and anticipated to occur through court approval. SG Footwear
14 shall reimburse Dr. Held and his counsel a total of \$19,000 for fees and costs incurred as a result of
15 investigating, bringing this matter to SG Footwear's attention, and litigating and negotiating a
16 settlement in the public interest. SG Footwear shall issue a separate 1099 for fees and costs (EIN:
17 94-3171522) and shall make the check payable to "Chanler Law Group," to be delivered on or before
18 the Effective Date, at the following address:

19 Chanler Law Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Dr. Held's Release of Defendants**

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 above, Dr. Held, on behalf of himself, his past and
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
28 legal action and releases all claims, including, without limitation, all actions, and causes of action, in

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

11 **6. 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 all parties, in which event any monies that have been provided to Dr.
15 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
16 (15) days after receiving written notice from SG Footwear that the one-year period has expired.

17 **7. SEVERABILITY**

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

21 **8. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
24 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
25 defendants shall provide written notice to Dr. Held of any asserted change in the law, and shall have
26 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
27 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
28 defendants from any obligation to comply with any pertinent state or federal toxics control laws.

1 **9. NOTICES**

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

6 For SG Footwear:

7 Bernard Leifer, President
8 SG Footwear/Messer Group, Inc.
9 S. Goldberg and Co., Inc.
Three University Plaza, Suite 400
Hackensack, NJ 07601

10 With copies to:

11 Frederick Locker, Esq.
12 Locker Greenberg & Brainin PC
13 420 Fifth Avenue
New York NY 10018

14 For Dr. Held:

15 Proposition 65 Coordinator
16 Chanler Law Group
17 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

20 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
3 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
4 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
5 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
6 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
7 at a minimum, cooperating on the drafting and filing of any papers in support of the required motion
8 for judicial approval, and supporting the Consent Judgment as written, in Court, as called upon.

9 **13. OPT-IN PROCEDURE**

10 **13.1** This Consent Judgment is executed with the understanding that additional persons and
11 entities not parties to this Consent Judgment may wish to be bound by the terms of this Consent
12 Judgment. Prior to the date of notice of entry of this Consent Judgment, or February 15, 2010,
13 whichever is later, a company wishing to opt in shall execute and deliver to Dr. Held the Stipulation
14 for Entry of Judgment as provided in section 13.2 below. Each Opt-In Defendant shall provide Dr.
15 Held with its mailing address and all other information as required under this Consent Judgment.

16 **13.2** Each Opt-In Defendant shall execute a “Stipulation for Entry of Judgment” in the
17 general form appearing in Exhibit 1 hereto and attesting under penalty of perjury to the following
18 facts: (1) the Opt-In Defendant has employed ten or more persons at any time between one year prior
19 to the date of approval of this Consent Judgment and the present (the “Relevant Period”); (2) one or
20 more of the Covered Products identified by the Opt-In Defendant did not, during the Relevant Period,
21 comply with the Reformulation Standards in subsection 2.3 of this Consent Judgment; (3) one or
22 more of the Covered Products were manufactured, imported, distributed or offered for use or sale in
23 California without a “clear and reasonable” Proposition 65 warning during the Relevant Period; (4)
24 the Opt-In Defendant has not performed a risk exposure assessment establishing that the Covered
25 Products in question did not require a Proposition 65 Warning; and (5) the Opt-In Defendant is
26 otherwise unaware of evidence which would establish an affirmative defense to an enforcement
27 action under Proposition 65 with respect to all Covered Products identified by the Opt-In Defendant
28 to be subject to this Consent Judgment. Opt-In Defendants shall reasonably cooperate with Dr. Held

1 in providing additional information or representations necessary to enable Dr. Held to issue a 60-Day
2 Notice of Violation to the Opt-In Defendant, together with a certificate of merit in support thereof,
3 with respect to the Covered Products.

4 **13.3** The Opt-In Defendant must also complete and append to its Opt-In Stipulation a copy
5 of Exhibit A and provide payments as set forth below. Said payments shall include civil penalties,
6 reimbursement of Plaintiff's past and estimated future attorneys' fees and costs.

7 **TABLE 13.3**

CATEGORY	MONETARY CONTRIBUTION
A. Opt-In Defendants (other than those that fall into Category B below):	A total of \$25,000, consisting of: (1) \$ 7,000 Civil Penalties (2) \$18,000 Plaintiff Attorneys' Fees
B. Opt-In Defendants with total verified Covered Product sales of less than 200 units sold in California during the Relevant Period (<i>de minimus</i> sales):	A total of \$15,000, consisting of: (1) \$ 2,000 Civil Penalties (2) \$13,000 Plaintiff Attorneys' Fees

16 For those Opt-In Defendants which believe they warrant the benefit of the *de minimus* sales category
17 in Category B above, the company is required to attach to its Opt-In Stipulation a company print-out
18 of the Covered Products by narrative description and, if available, the corresponding UPC code,
19 together with the corresponding sales volumes for the Relevant Period.

20 **13.4** After delivery to Dr. Held of each such Opt-in Stipulation, Dr. Held shall send a 60-
21 Day Notice of Violation pursuant to California Health & Safety Code §25249.7(d) to each Opt-In
22 Defendant at the address provided, to the California Attorney General's Office, to every California
23 district attorney, and to every city attorney required to receive such Notice pursuant to Health &
24 Safety Code §25249.7.

25 **13.5** Once at least sixty-five (65) days have run from the date specified in a Notice sent to
26 an Opt-In Defendant, and provided that no public prosecutor of Proposition 65 has filed a lawsuit
27 against that Opt-In Defendant with respect to the Covered Products, plaintiff shall file in this Court
28

1 any executed Opt-In Stipulation it has received and serve notice thereof on the Opt-In Defendant. At
2 the time an executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been
3 amended to name the Opt-In Defendant that executed the Opt-In Stipulation as a defendant in this
4 Action. Each such Opt-In Defendant shall then assume all obligations set herein.

5 **14. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties and
7 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
8 any party and entry of a modified consent judgment by the Court.

9 **15. AUTHORIZATION**

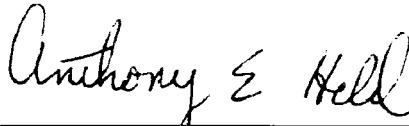
10 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
11 parties and have read, understood, and agree to all of the terms and conditions hereof.

12
13 **AGREED TO:**

AGREED TO:

14 Date: 12/13/09 _____

Date: _____

15
16 By:  _____
17 ANTHONY E. HELD, Ph.D., P.E.

15
16 By: _____
17 Paul Kingslow, Vice President
S. GOLDBERG & CO., INC.

18
19 **IT IS SO ORDERED.**

20
21 Date: _____

22 JUDGE OF THE SUPERIOR COURT

1 any executed Opt-In Stipulation it has received and serve notice thereof on the Opt-In Defendant. At
2 the time an executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been
3 amended to name the Opt-In Defendant that executed the Opt-In Stipulation as a defendant in this
4 Action. Each such Opt-In Defendant shall then assume all obligations set herein.

5 **14. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties and
7 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
8 any party and entry of a modified consent judgment by the Court.

9 **15. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
11 parties and have read, understood, and agree to all of the terms and conditions hereof.

12
13 **AGREED TO:**

AGREED TO:

14 Date: _____

Date: December 11, 2009

15
16 By: _____
17 ANTHONY E. HELD, Ph.D., P.E.

By:  _____
Paul Kingslow, Vice President
S. GOLDBERG & CO., INC.

18
19 **IT IS SO ORDERED.**

20
21 Date: _____

JUDGE OF THE SUPERIOR COURT