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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

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

14 Plaintiff,

15 v.

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

18 Defendants.
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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 children’s apparel and/or fashion accessories containing di(2-ethylhexyl)phthalate (“DEHP”) in the
22 State of California without the requisite health hazard warnings. Fashion accessories are defined
23 specifically as hair bands and fasteners, purses, packs, cases for electronics and toiletries, belts,
24 decorative neckwear, watches, necklaces, rings, bracelets, anklets, pins and earrings. DEHP is listed
25 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
26 Code §§25249.5 et seq. (“Proposition 65”), as chemicals known to the State of California to cause
27 birth defects and other reproductive harm. DEHP is referred to herein as the “Listed Chemical.”
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1 **1.5 Product Description**

2 The products that are covered by this Consent Judgment are defined as follows: children’s
3 shoes, children’s apparel and/or fashion accessories (as defined above) containing the Listed
4 Chemical, in this instance more particularly stated as *Barney Touch Down Shoes, Style*
5 *AV11182AGN-T*. All such items shall be referred to herein as the “Covered Products.”

6 **1.6 Notice of Violation**

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

12 **1.7 Complaint**

13 On August 5, 2009, Dr. Held, who was and is acting in the interest of the general public in
14 California, filed a second amended complaint (“Complaint”) in case number CGC-08-481439 of the
15 San Francisco Superior Court, adding SG Footwear as a defendant and alleging violations of Health
16 & Safety Code §25249.6 by SG Footwear based on the alleged exposures to the Listed Chemical
17 contained in the Covered Products sold by SG Footwear. On February 26, 2010, Dr. Held attached a
18 third amended complaint, still naming S. Goldberg, to a noticed motion for leave to file it, in order to
19 efficiently add defendants and products ultimately sold by retailer-defendant Burlington Coat Factory
20 Warehouse Corporation. If the Court authorizes the filing of the third amended complaint, the third
21 amended complaint will become the operative complaint for purposes of this Consent Judgment as of
22 May 1, 2010.

23 **1.8 No Admission**

24 Each defendant denies the material, factual, and legal allegations contained in Dr. Held’s
25 Notice and Complaint and maintains that all products that it has sold and distributed in California
26 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
27 as an admission by defendants of any fact, finding, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment constitute or be construed as an admission by defendants of

1 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
2 defendants. However, this Section shall not diminish or otherwise affect each defendant's
3 obligations, responsibilities and duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

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

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean December 15,
11 2009 (or, for Opt-In Defendants, the Effective Date shall mean the date that the opt-in stipulation is
12 filed with the Court.)

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

14 **2.1 Product Warnings**

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

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

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

(ii) Point-of-Sale Warnings. Alternatively, defendants may perform their warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Covered Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Covered Products that states:

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

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

WARNING: The following 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. Each defendant shall satisfy its warning obligations for Covered Products sold via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings

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

1 given in the mail order catalog or on the website shall identify the specific product to which the
2 warning applies as further specified in Sections 2.1(b)(i) and (ii).

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

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

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

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

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

23 (ii) **Internet Website Warning.** A warning may be given in conjunction
24 with the sale of the Covered Products via the Internet, provided it appears either: (a) on the same
25 web page on which the product is displayed; (b) on the same web page as the order form for the
26 product; (c) on the same page as the price for any product; or (d) on one or more web pages displayed
27 to a purchaser during the checkout process. The following warning statement shall be used and shall
28 appear in any of the above instances adjacent to or immediately following the display, description, or

1 price of the product for which it is given in the same type size or larger than the product description
2 text:

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

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

11 **2.2 Exceptions To Warning Requirements**

12 The warning requirements set forth in Section 2.1 shall not apply to any Reformulated
13 Products (as defined in Section 2.3 below).

14 **2.3 Reformulation Standards**

15 Reformulated Products are defined as those Covered Products containing less than or equal to
16 1,000 parts per million (“ppm”) of the Listed Chemical. Defendants shall use Environmental
17 Protection Agency (“EPA”) testing methodologies 3580A and 8720C (or any test method allowed by
18 any federal or state agency to determine the DEHP content in consumer products) to determine
19 whether the permitted level of the Listed Chemical has been exceeded in its Covered Products.

20 **2.4 Future Reformulation Commitments**

21 Defendants hereby commit that one hundred percent (100%) of the Covered Products that
22 they offer for sale in California after the Effective Date shall qualify as Reformulated Products.

23 **3. MONETARY PAYMENTS**

24 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

25 In settlement of all claims related to DEHP and the Covered Products pursuant to Health &
26 Safety Code § 25249.7(b), SG Footwear shall pay \$6,000 in civil penalties. Civil penalties are to be
27 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
28 remitted to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)

1 and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health &
2 Safety Code §25249.12(d). SG Footwear shall issue two separate checks for the penalty payment:
3 (a) one check made payable to “Chanler Law Group in Trust for OEHHA” in the amount of \$4,500,
4 representing 75% of the total penalty; and (b) one check to “Chanler Law Group in Trust for Anthony
5 Held” in the amount of \$1,500, representing 25% of the total penalty. Two separate 1099s shall be
6 issued for the above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
7 0284486); and (b) Anthony Held, whose payment information shall be provided upon request five
8 calendar days before the payment is due.

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

11 Chanler Law Group
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 without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
18 issue to be resolved after the material terms of the agreement had been settled. SG Footwear then
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
20 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
21 Held and his counsel under general contract principles and the private attorney general doctrine
22 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the
23 mutual execution of this agreement and anticipated to occur through court approval. SG Footwear
24 shall reimburse Dr. Held and his counsel a total of \$19,000 for fees and costs incurred as a result of
25 investigating, bringing this matter to SG Footwear’s attention, and litigating and negotiating a
26 settlement in the public interest. SG Footwear shall issue a separate 1099 for fees and costs (EIN:
27 94-3171522) and shall make the check payable to “Chanler Law Group,” to be delivered on or before
28 the Effective Date, at the following address:

1 Chanler Law Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Dr. Held's Release of Defendants**

8 In further consideration of the promises and agreements herein contained, and for the
9 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
10 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
11 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
12 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
13 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
14 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
15 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
16 defendants and each of their downstream distributors, wholesalers, licensors, licensees, auctioneers,
17 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
18 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
19 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
20 release is limited to those claims that arise under Proposition 65, as such claims relate to defendants'
21 alleged failure to warn about exposures to or identification of DEHP contained in the Covered
22 Products.

23 **6. COURT APPROVAL**

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

1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

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

13 **9. NOTICES**

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

18 For SG Footwear:

19 Bernard Leifer, President
20 SG Footwear/Messer Group, Inc.
21 S. Goldberg and Co., Inc.
22 Three University Plaza, Suite 400
23 Hackensack, NJ 07601

24 With copies to:
25 Frederick Locker, Esq.
26 Locker Greenberg & Brainin PC
27 420 Fifth Avenue
28 New York NY 10018

29 For Dr. Held:

30 Proposition 65 Coordinator
31 Chanler Law Group
32 2560 Ninth Street
33 Parker Plaza, Suite 214
34 Berkeley, CA 94710

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **11. 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 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

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

18 **13. OPT-IN PROCEDURE**

19 **13.1** This Consent Judgment is executed with the understanding that additional persons and
20 entities not parties to this Consent Judgment may wish to be bound by the terms of this Consent
21 Judgment. Prior to the date of notice of entry of this Consent Judgment, or by May 3, 2010,
22 whichever is later, a company wishing to opt in shall execute and deliver to Dr. Held the Stipulation
23 for Entry of Judgment as provided in section 13.2 below. Each Opt-In Defendant shall provide Dr.
24 Held with its mailing address and all other information as required under this Consent Judgment.

25 **13.2** Each Opt-In Defendant shall execute a “Stipulation for Entry of Judgment” in the
26 general form appearing in Exhibit 1 hereto and attesting under penalty of perjury to the following
27 facts: (1) the Opt-In Defendant has employed ten or more persons at any time between one year prior
28 to the date of approval of this Consent Judgment and the present (the “Relevant Period”); (2) one or

1 more of the Covered Products identified by the Opt-In Defendant did not, during the Relevant Period,
 2 comply with the Reformulation Standards in subsection 2.3 of this Consent Judgment; (3) one or
 3 more of the Covered Products were manufactured, imported, distributed or offered for use or sale in
 4 California without a “clear and reasonable” Proposition 65 warning during the Relevant Period; (4)
 5 the Opt-In Defendant has not performed a risk exposure assessment establishing that the Covered
 6 Products in question did not require a Proposition 65 Warning; and (5) the Opt-In Defendant is
 7 otherwise unaware of evidence which would establish an affirmative defense to an enforcement
 8 action under Proposition 65 with respect to all Covered Products identified by the Opt-In Defendant
 9 to be subject to this Consent Judgment. Opt-In Defendants shall reasonably cooperate with Dr. Held
 10 in providing additional information and truthful representations necessary to enable Dr. Held to issue
 11 a 60-Day Notice of Violation to the Opt-In Defendant, together with a certificate of merit in support
 12 thereof, with respect to the Covered Products.

13 **13.3** The Opt-In Defendant must also complete and append to its Opt-In Stipulation a copy
 14 of Exhibit A and provide payments as set forth below. Said payments shall include civil penalties,
 15 reimbursement of Plaintiff’s past and estimated future attorneys’ fees and costs.

16 **TABLE 13.3**

CATEGORY	MONETARY CONTRIBUTION
17 18 19 A. Opt-In Defendants (other than those 20 that fall into Category B below):	A total of \$25,000, consisting of: (1) \$ 7,000 Civil Penalties (2) \$18,000 Plaintiff Attorneys’ Fees
21 22 B. Opt-In Defendants with total 23 verified Covered Product sales of less 24 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

25 For those Opt-In Defendants which believe they warrant the benefit of the *de minimus* sales category
 26 in Category B above, the company is required to attach to its Opt-In Stipulation a company print-out
 27 of the Covered Products by narrative description and, if available, the corresponding UPC code,
 28

1 together with the corresponding sales volumes for the Relevant Period.

2 **13.4** After delivery to Dr. Held of each such Opt-in Stipulation, Dr. Held shall send a 60-
3 Day Notice of Violation pursuant to California Health & Safety Code §25249.7(d) to each Opt-In
4 Defendant at the address provided, to the California Attorney General’s Office, to every California
5 district attorney, and to every city attorney required to receive such Notice pursuant to Health &
6 Safety Code §25249.7.

7 **13.5** Once at least sixty-five (65) days have run from the date specified in a Notice sent to
8 an Opt-In Defendant, and provided that no public prosecutor of Proposition 65 has filed a lawsuit
9 against that Opt-In Defendant with respect to the Covered Products, plaintiff shall file in this Court
10 any executed Opt-In Stipulation it has received and serve notice thereof on the Opt-In Defendant. At
11 the time an executed Opt-In Stipulation is filed, the Complaint shall be deemed to have been
12 amended to name the Opt-In Defendant that executed the Opt-In Stipulation as a defendant in this
13 Action. Each such Opt-In Defendant shall then assume all obligations set herein.

14 **13.6** Following the opt-in period, Dr. Held shall file with the Court a request for judicial
15 review and approval of all executed opt-in stipulations received by Dr. Held, together with summary
16 support, and serve a copy of that filing on the Attorney General’s Office at least 45 days before the
17 hearing date.

18 **14. MODIFICATION**

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

AGREED TO:

APPROVED
By Tony Held at 11:49 am, Mar 01, 2010

Date: _____

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

AGREED TO:

Date: _____

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


AGREED TO:

AGREED TO:

Date: _____

Date: March 1, 2010

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

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

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 David Lavine, State Bar No. 166744
3 CHANLER LAW GROUP
4 2560 Ninth Street
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9 Attorneys for Plaintiff
10 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 JURISDICTION

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

15 v.

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

Case No. CGC-08-481439

**STIPULATION FOR ENTRY OF
JUDGMENT**

1 1. The following constitutes the knowing and voluntary election and stipulation of
2 the entity named below (“Company” or “Opt-In Defendant”) to join as a Settling Defendant
3 under the Consent Judgment previously entered by the Court in *Held v. S. Goldberg and Co.*
4 *Inc., et al.*, San Francisco Superior Court Case No. CGC-08-481439 (“Action”) and to be
5 bound by the terms of that Consent Judgment.

6 2. At any time during the one-year period prior to notice of entry of the
7 accompanying Consent Judgment through the present (“Relevant Period”), the Company has
8 employed ten or more part-time or full-time persons, and has manufactured, distributed,
9 offered for use or sold one or more items in each of the following categories of products
10 covered by the Consent Judgment (“Covered Products”) (check all that apply):

- 11 **Children’s Shoes**
- 12 **Children’s Apparel**
- 13 **Fashion Accessories**

14 At least one of the items in each of the categories checked above during the Relevant Period
15 did not or does not currently meet the Reformulation Standards set forth for that category of
16 Covered Products in section 2.3 of the Consent Judgment. The Company has not provided
17 compliant Proposition 65 warnings in conjunction with the sale or use of all such Covered
18 Products in California at all times during the Relevant Period. The Company has not
19 conducted a risk or exposure assessment for all Covered Products within each separate
20 category checked above firmly establishing that the use of such Covered Products will result in
21 an exposure in an amount less than that deemed permissible in 27 Cal. Code Regs. §25805(b).

22 3. The Company agrees to be bound by the injunctive relief provisions of the
23 Consent Judgment as it relates to each checked category of Covered Products.

24 4. In conjunction with the execution of this Stipulation, the Company agrees to
25 provide the payments applicable to it as set forth and in the manner described in the Consent
26 Judgment. In this regard, the Company hereby represents and warrants that with respect to the
27 Covered Products, it is a (check only one):

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- 1 □ (a) **Standard Manufacturer, Distributor, or Retailer Opt-In Defendant**, or
- 2 □ (b) **Opt-In Defendant with *De Minimus* Sales**, i.e., combined sales in
- 3 California of less than 200 consumer units of Covered Products in the Relevant
- 4 Period (attach to this Stipulation documentary support of low sales volume(s) as
- 5 specified in Section 13.3 of the Consent Judgment).

6 5. The Company, through the undersigned representative, attests under penalty of
7 perjury to the following facts: (1) it employed ten or more persons at any time during the
8 Relevant Period; (2) one or more of the Covered Products identified by the Opt-In Defendant
9 were manufactured, imported, distributed or offered for use or sale in California without a
10 “clear and reasonable” Proposition 65 warning during the Relevant Period; (3) one or more of
11 the Covered Products identified by the Opt-In Defendant did not, during the Relevant Period,
12 comply with the Reformulation Standards in subsection 2.3 of this Consent Judgment; (4) it
13 has not performed a risk exposure assessment establishing that the Covered Products in
14 question did not require a Proposition 65 warning; and (5) it is otherwise unaware of evidence
15 which would establish an affirmative defense to an enforcement action under Proposition 65
16 with respect to all Covered Products identified by the Opt-In Defendant.

17 6. The Company agrees to be deemed to have accepted service of a 60-Day Notice
18 of Violation from plaintiff alleging certain violations of Proposition 65 with respect to sales of
19 the Covered Products identified herein. The Company further agrees to be deemed to have
20 voluntarily accepted service of the summons and complaint in this Action upon the filing of
21 this Stipulation and agrees to be subject to the jurisdiction of the Court for purposes of the
22 Consent Judgment.

23 7. If the Company desires to change the individual and/or address designated to
24 receive notice and service on its behalf, the Company shall provide notice to plaintiff’s counsel
25 at the address in Section 9 of the Consent Judgment.

26 8. The undersigned have full authority to make the representations above and to
27 enter into this Stipulation for the entity on behalf of which he/she is signing.

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9. The undersigned have read, and the person and/or entity named below knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation and the Consent Judgment previously approved and entered by the San Francisco County Superior Court in this Action.

IT IS HEREBY STIPULATED AND AGREED TO:

By: _____
(signature)

By: _____

On Behalf of Plaintiff Anthony Held, Ph.D., P.E.

Name (printed/typed)

Title (printed/typed)

On Behalf of:

(Insert Company Name)

Opt-In Defendant

Dated: _____

Dated: _____

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EXHIBIT A

Name of Opt-In Defendant: _____

Address:

E-Mail Address: _____

Telephone Number: _____