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SHALOM INTERNATIONAL CORP.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF MARIN
16 UNLIMITED CIVIL JURISDICTION
17

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

19 Plaintiff,

20 v.

21 SHALOM INTERNATIONAL CORP., *et al.*,

22 Defendants.

Case No. CIV 094909

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Shalom International Corp.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Shalom International Corp. (hereinafter “Shalom” or “Defendant”), with
5 Dr. Held and Shalom collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Dr. 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 Shalom employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code §25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: pre-walk
22 shoes containing the Listed Chemical, including, but not limited to, *So Durable, Item # 556159L (#0*
23 *27467 05615 9)*. All such items shall be referred to herein as the “Products.”

24 **1.6 Notice of Violation**

25 On June 30, 2009, Dr. Held served Shalom and various public enforcement agencies with a
26 document entitled “60-Day Notice of Violation” (the “Notice”) that provided Shalom and such public
27 enforcers with notice that alleged that Shalom was in violation of California Health & Safety Code
28 §25249.6 for failing to warn consumers and customers that the Products exposed users in California

1 to DEHP. To the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set
2 forth in the Notice.

3 **1.7 Complaint**

4 On September 25, 2009, Dr. Held, who was and is acting in the interest of the general public
5 in California, filed a complaint ("Complaint") in the Marin County Superior Court, naming Shalom
6 as a defendant and alleging violations of Health & Safety Code §25249.6 by Shalom based on the
7 alleged exposures to DEHP contained in the Products manufactured, distributed and/or offered for
8 sale in California by Shalom.

9 **1.8 Answer**

10 On November 2, 2009, Defendant responded to the Complaint by filing a general denial and
11 affirmative defenses denying all claims alleged by Plaintiff.

12 **1.9 No Admission**

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

21 **1.10 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Shalom as to the allegations contained in the Complaint, that venue is proper in the
24 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment.

26 **1.11 Purpose of Consent Judgment**

27 In order to avoid continued and protracted litigation, the Parties wish to resolve completely
28 and finally the issues raised by the Notice and the Complaint pursuant to the terms and conditions

1 described herein. By entering into this Consent Judgment, the Parties recognize that this Consent
2 Judgment is a full and final settlement of all claims related to the Products and the Listed Chemical
3 that were raised or could have been raised in the Complaint. The Parties also intend for this consent
4 Judgment to provide, to the maximum extent permitted by law, *res judicata* and/or collateral estoppel
5 protection for Defendants, against any and all other claims based upon the same or similar allegations
6 to the Products and the Listed Chemical.

7 **1.12 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean February 1,
9 2010.

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

11 **2.1 Product Warnings**

12 Commencing on the Effective Date, Shalom shall not sell, ship, or offer to be shipped for sale
13 in California any Product unless such Products are sold or shipped with one of the clear and
14 reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section
15 2.2, or comply with the reformulation standards set forth in Section 2.3.

16 Each warning shall be prominently placed with such conspicuousness as compared with other
17 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. Each warning shall be provided in a
19 manner such that the consumer or user understands to which *specific* Product the warning applies, so
20 as to minimize the risk of consumer confusion.

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

22 **(i) Product Labeling.** Shalom may affix a warning to the packaging,
23 labeling, or directly on each Product sold in retail outlets in California by Shalom or its agents, that
24 states:

25 **WARNING:** This product contains DEHP, a phthalate
26 chemical known to the State of California to
27 cause birth defects and other reproductive harm.
28

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

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

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

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

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

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

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

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

28 ¹ For purposes of the consent judgment, “sold in proximity” shall mean that the 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 Where it is impracticable to provide the warning on the same page and in the same location as
2 the display and/or description of the Product, Shalom may utilize a designated symbol to cross
3 reference the applicable warning and shall define the term “designated symbol” with the following
4 language on the inside of the front cover of the catalog or on the same page as any order form for the
5 Product(s):

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

9 The designated symbol must appear on the same page and in close proximity to the display
10 and/or description of the Product. On each page where the designated symbol appears, Shalom must
11 provide a header or footer directing the consumer to the warning language and definition of the
12 designated symbol.

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

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

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

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

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

4 **2.2 Exceptions To Warning Requirements**

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

- 6 (i) Any Product manufactured by Shalom prior to the Effective Date; or
- 7 (ii) Reformulated Products (as defined in Section 2.3 below).

8 **2.3 Reformulation Standards**

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

12 **2.4 Past and Future Reformulation Steps**

13 Shalom hereby commits that one hundred percent (100%) of the Products that it manufactures
14 after the Effective Date, for sale in California, shall qualify as Reformulated Products.

15 **3. MONETARY PAYMENTS**

16 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

17 In settlement of all claims related to the Products and Listed Chemical referred to in the
18 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Shalom shall
19 pay \$5,500 in civil penalties.

20 Civil penalties are to be apportioned in accordance with California Health & Safety Code §
21 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
22 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as
23 provided by California Health & Safety Code §25249.12(d). Shalom shall issue two separate checks
24 for the penalty payment: (a) one check made payable to “Chanler Law Group in Trust for OEHHA”
25 in the amount of \$4,125, representing 75% of the total penalty; and (b) one check to “Chanler Law
26 Group in Trust for Anthony Held” in the amount of \$1,375, representing 25% of the total penalty.
27 Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010,
28

1 Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be
2 provided five calendar days before the payment is due.

3 Payment shall be delivered to Dr. Held's counsel on or before February 1, 2010, at the
4 following address:

5 Chanler Law Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

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

11 **4.1 Attorney Fees and Costs**

12 The Parties reached an accord on the compensation due to Dr. Held and his counsel under
13 general contract principles and the private attorney general doctrine codified at California Code of
14 Civil Procedure (C.C.P.) § 1021.5. Shalom, on behalf of itself and those in its chain of distribution,
15 shall reimburse Dr. Held and his counsel a total of \$35,000 for fees and costs incurred as a result of
16 investigating, bringing this matter to Shalom's attention, and litigating and negotiating a settlement in
17 the public interest. This figure includes Dr. Held's future fees and costs including attorneys' fees to
18 be incurred in seeking judicial approval of this Consent Judgment as well as any other legal work
19 performed after the execution of this Consent Judgment incurred in an effort to obtain finality of the
20 case. Shalom shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall issue a
21 check payable to "Chanler Law Group," to be delivered on or before February 1, 2010, to:

22 Chanler Law Group
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **5. RELEASE OF ALL CLAIMS**

28 **5.1 Dr. Held's Release of Shalom**

In further consideration of the promises and agreements herein contained, and for the
payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and

1 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
2 general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
3 participate in, directly or indirectly, any form of legal action and releases all claims, including,
4 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
5 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses or
6 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
7 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
8 Shalom and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
9 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
10 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
11 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
12 release is limited to those claims that arise under Proposition 65, as such claims relate to Shalom's
13 alleged failure to warn about exposures to or identification of DEHP contained in the Products.

14 The Parties further understand and agree that the above releases shall not extend upstream to
15 any entities that manufactured the Products or any component parts thereof, or any distributors or
16 suppliers who sold the Products or any component parts thereof to Shalom.

17 **5.2 Shalom Release of Dr. Held**

18 Shalom waives any and all claims against Dr. Held, his attorneys and other representatives,
19 for any and all actions taken by Dr. Held and his attorneys and other representatives, whether in the
20 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
21 matter, and/or with respect to the Products.

22 **6. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and shall
24 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
25 has been fully executed by all parties, in which event any monies that have been provided to Dr.
26 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
27 (15) days after receiving written notice from Shalom that the one-year period has expired.
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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 Products, or if any of the
9 provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of any
10 such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then
11 Shalom shall have no further obligations pursuant to this Consent Judgment with respect to, and to
12 the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
13 relieve Shalom from any obligation to comply with any pertinent state or federal toxics control laws.

14 **9. NOTICES**

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

19 For Shalom:

20 Patricia Petenko
21 Controller
22 Shalom International Corp.
23 1050 Amboy Avenue
24 Suite 1
25 Perth Amboy, NJ 08861

26 With a copy to:

27 Kurt Weissmuller, Esq.
28 Megan K. Hey, Esq.
ALSTON & BIRD LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, CA 90071

1 For Dr. Held:

2 Proposition 65 Coordinator
3 Chanler Law Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

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

9 Should Dr. Held become aware of any Products manufactured, distributed or sold by Shalom
10 in California that Dr. Held believes violates Section 2 of this Consent Judgment, before taking any
11 other action, Dr. Held agrees to provide Shalom with written notice of such alleged violation(s).

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by facsimile, or .pdf signature,
14 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
15 and the same document.

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

17 Dr. Held and his attorneys agree to comply with the reporting form requirements referenced in
18 California Health & Safety Code §25249.7(f).

19 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
21 is required to obtain judicial approval of this Consent Judgment, which Dr. Held shall draft and file.
22 In furtherance of obtaining such approval, Dr. Held and Shalom and their respective counsel agree to
23 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and
24 obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this
25 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing of any
26 papers in support of the required motion for judicial approval.
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13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court.

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 hereof.

AGREED TO:

AGREED TO:

Date: January 19, 2010

Date: _____

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

By: _____
Edward Baranoff, President
SHALOM INTERNATIONAL CORP.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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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 hereof.

AGREED TO:

Date: _____

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

AGREED TO:

Date: 1/14/2010

By: Edward Baranoff
Edward Baranoff, President
SHALOM INTERNATIONAL CORP.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT