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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 ALPARGATAS USA, INC., and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. CIV 1003019

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., Alpargatas USA, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Alpargatas USA, Inc., which does business as Havaianas (“Alpargatas”).
5 Dr. Held and Alpargatas are 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 Alpargatas**

11 Alpargatas 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 Alpargatas has sold in the State of California footwear containing di(2-
16 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to the Safe Drinking Water and Toxic
17 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”), as
18 a chemical known to the State of California to cause birth defects and other reproductive harm.
19 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: all footwear,
22 specifically shoes and sandals containing the Listed Chemical, including, but not limited to,
23 *Havaianas Baby Brazil Light Green (#7 41940 24645 4)*. All such items marketed or sold by
24 Alpargatas shall be referred to herein as the “Products.”

25 **1.6 Notice of Violation**

26 On February 12, 2010, Dr. Held served Alpargatas and the required public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” that provided Alpargatas and such
28 public enforcers with notice that alleged that Alpargatas was in violation of California Health &

1 Safety Code § 25249.6 for failing to warn consumers and customers that the Products exposed users
2 in California to DEHP.

3 **1.7 Complaint**

4 On June 9, 2010, Dr. Held, who was and is acting in the interest of the general public in
5 California, filed a complaint in the Marin County Superior Court, naming Alpargatas as a defendant
6 and alleging violations of Health & Safety Code § 25249.6 by Alpargatas based on the alleged
7 exposures to DEHP contained in the Products offered for sale in California by Alpargatas.

8 **1.8 No Admission**

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

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the parties stipulate that this Court has
19 jurisdiction over Alpargatas as to the allegations contained in the Complaint, that venue is proper in
20 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 15, 2010.

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

25 **2.1 Reformulation Commitment and Product Warnings**

26 Commencing 90 days from the Effective Date, Alpargatas shall not manufacture or cause to
27 be manufactured for sale in California any Products unless such Products comply with the
28 reformulation standards set forth in Section 2.2. In the interim, Alpargatas has begun providing, and

1 shall continue to provide, the clear and reasonable warnings set forth in subsections 2.1(a) and (b),
2 unless exempt from doing so pursuant to Section 2.2.

3 For the interim period when warnings are utilized, each warning shall be prominently placed
4 with such conspicuousness as compared with other words, statements, designs, or devices as to render
5 it likely to be read and understood by an ordinary individual under customary conditions before
6 purchase or use. Each warning shall be provided in a manner such that the consumer or user
7 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
8 confusion.

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

10 (i) **Product Labeling.** Alpargatas may affix a warning to the packaging,
11 labeling, or directly on each Product sold in retail outlets in California by Alpargatas or any person
12 selling its Products, that states:

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

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

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

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

25 **WARNING:** The following products contain DEHP, a
26 phthalate chemical known to the State of
27 California to cause birth defects and other
28 reproductive harm:

[list products for which warning is required]

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

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

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

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

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

21 The designated symbol must appear on the same page and in close proximity to the display
22 and/or description of the Product. On each page where the designated symbol appears, Alpargatas
23 must provide a header or footer directing the consumer to the warning language and definition of the
24 designated symbol.

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

27 **(ii) Internet Website Warning.** A warning may be given in conjunction
28 with the sale of the Products via the Internet, provided it appears either: (a) on the same web page on

1 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
2 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
3 during the checkout process. The following warning statement shall be used and shall appear in any
4 of the above instances adjacent to or immediately following the display, description, or price of the
5 Product for which it is given in the same type size or larger than the Product description text:

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

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

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

17 **2.2 Exceptions To Warning Requirements**

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

19 (i) Any Products manufactured or caused to be manufactured by
20 Alpargatas or sold by Alpargatas or Saks Incorporated or Saks & Company (including their
21 respective affiliates) (collectively "Saks"), or shipped by Alpargatas to any third party (including but
22 not limited to Saks) for distribution or retail sale, prior to the Effective Date; or

23 (ii) Reformulated Products, defined as those Products containing less than
24 or equal to 1,000 parts per million ("ppm") of the Listed Chemical when analyzed pursuant to
25 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.
26
27
28

1 **3. MONETARY PAYMENTS**

2 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all claims related to the Products and Listed Chemical referred to in the
4 Complaint, and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), Alpargatas
5 shall pay \$59,000 in civil penalties.

6 Civil penalties are to be apportioned in accordance with California Health & Safety Code
7 § 25192, with 75% of these funds remitted to the State of California's Office of Environmental
8 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony
9 Held as provided by California Health & Safety Code § 25249.12(d). Alpargatas shall issue two
10 separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in
11 Trust for OEHHA" in the amount of \$44,250, representing 75% of the total penalty; and (b) one
12 check to "The Chanler Group in Trust for Anthony Held" in the amount of \$14,750, representing
13 25% of the total penalty. Two separate 1099s shall be issued for the above-payments: (a) OEHHA,
14 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
15 information shall be provided five calendar days before the payment is due.

16 Payment shall be delivered to Dr. Held's counsel on or before the Effective Date, at the
17 following address:

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

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

22 **4.1 Attorney Fees and Costs**

23 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
25 issue to be resolved after the material terms of the agreement had been settled. Alpargatas then
26 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
27 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
28 Held and his counsel under general contract principles and the private attorney general doctrine

1 codified at California Code of Civil Procedure (C.C.P.) § 1021.5, for all work performed through the
2 mutual execution of this agreement. Alpargatas, on behalf of itself and those in its chain of
3 distribution, shall reimburse Dr. Held and his counsel a total of \$40,000 for fees and costs incurred
4 as a result of investigating, bringing this matter to Alpargatas' attention, and litigating and negotiating
5 a settlement in the public interest. Alpargatas shall issue a separate 1099 for fees and costs (EIN: 94-
6 3171522) and shall make the check payable to "The Chanler Group" and shall be delivered on or
7 before the Effective Date.

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

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Dr. Held's Release of Alpargatas**

15 In further consideration of the promises and agreements herein contained, and for the
16 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
17 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
18 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
19 legal action and releases all claims, including, without limitation, all actions, and causes of action, in
20 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
21 expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any
22 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
23 Alpargatas and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers,
24 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
25 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
26 shareholders, agents, and employees, and sister, affiliated and parent entities (collectively
27 "Releasees"). Without limiting the foregoing, Dr. Held expressly releases all Claims against Saks (as
28 defined in paragraph 2.2 above), including all affiliates who procured, marketed, distributed, offered
for sale or sold the Products. The releases in this Consent Judgment are limited to those claims that

1 arise under Proposition 65, as such claims relate to Alpargatas' or any Releasee's alleged failure to
2 warn about exposures to or identification of DEHP contained in the Products.

3 **5.2 Alpargatas' Release of Dr. Held**

4 Alpargatas waives any and all claims against Dr. Held, his attorneys and other representatives,
5 for any and all actions taken or statements made (or those that could have been taken or made) by Dr.
6 Held and his attorneys and other representatives, whether in the course of investigating claims or
7 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
8 Products.

9 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

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 Alpargatas:

7 Matthew P. Lewis
8 White & Case LLP
9 633 W. 5th Street, 19th Floor
 Los Angeles, CA 90071
 213-620-7700

 AND

 Afonso Sugiyama
 Alpargatas USA
 131 Spring Street, Suite 201E
 New York, New York 10012

10 For Dr. Held:

11 Proposition 65 Coordinator
12 The Chanler Group
13 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

23 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

24 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
25 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
26 approval, Dr. Held and Alpargatas and their respective counsel agree to mutually employ their best
27 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
28

1 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
2 include, at a minimum, cooperating on the drafting and filing of any papers in support of the required
3 motion for judicial approval.

4 **13. MODIFICATION**

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

8 **14. AUTHORIZATION**

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

11 **AGREED TO:**

APPROVED

By Tony Held at 0:11 am, Jun 09, 2010

12 Date: _____

AGREED TO:

Date: 06/08/2010

13 Date: _____

14 By: _____

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

14 By: _____

Afonso Sugiyama, President
ALPARGATAS USA, INC.

16 **IT IS SO ORDERED.**

17 Date: _____

18 _____
19 JUDGE OF THE SUPERIOR COURT