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3 THE CHANLER GROUP
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7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 THE COUNTY OF ALAMEDA
15 UNLIMITED CIVIL JURISDICTION
16
17

18 ANTHONY E. HELD, Ph.D., P.E.,
19 Plaintiff,
20
21 v.
22
23 GRENDENE USA, INC.; and
24 DOES 1-150, inclusive,
25
26 Defendants.

Case No. RG11559986

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

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

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Dr. Held”) and Grendene USA, Inc. (hereinafter “Grendene”). Dr. Held and Grendene
5 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 Defendants**

11 Grendene 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 Grendene sold in the State of California footwear containing di(2-
16 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to
17 the State of California to cause birth defects and other reproductive harm. DEHP is also referred to
18 herein as the “Listed Chemical.”

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are footwear containing DEHP,
21 including, but not limited to, *Grendha Jelly Jody, #35284, #06005 Smoke (#637467 489743)*,
22 manufactured, distributed or sold by Grendene in California (“Products”).

23 **1.6 Notice of Violation**

24 On September 1, 2010, Dr. Held served Grendene and various public enforcement agencies
25 with a document entitled “60-Day Notice of Violation” that provided Grendene and such public
26 enforcers with notice that alleged that Grendene was in violation of Proposition 65 for failing to warn
27 consumers and customers that the Products exposed users in California to DEHP.

28

1 **1.7 Complaint**

2 On or about February 4, 2011, Dr. Held, who alleges that he was and is acting in the interest
3 of the general public in California, filed a complaint in the Alameda Superior Court (the
4 “Complaint”), naming Grendene as a defendant and alleging violations of Proposition 65 by
5 Grendene based on the alleged exposures to DEHP contained in the Products manufactured,
6 distributed, and/or offered for sale in California by Grendene.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 16, 2011.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Reformulation Commitment**

25 After the Effective Date, Grendene shall not import or manufacture any Product that will be
26 sold or offered for sale to California citizens unless they are “Reformulated Products.” Commencing
27 on December 31, 2011, Grendene shall not supply to an unaffiliated third party any Product that will
28 be sold or offered for sale to California citizens unless they are “Reformulated Products.” For

1 purposes of this Consent Judgment, Reformulated Products shall mean Products containing DEHP in
2 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to EPA testing
3 methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess the
4 DEHP content by weight of a solid substance.

5 **3. MONETARY PAYMENTS**

6 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

7 Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be
8 \$5,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code
9 §25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of
10 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% to Held.

11 Grendene shall issue two separate checks for the penalty payment: (a) one check made
12 payable to "The Chanler Group in Trust for OEHHA" in the amount of \$3,750, representing 75% of
13 the total penalty; and (b) one check to "The Chanler Group in Trust for Anthony Held" in the amount
14 of \$1,250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above
15 payments: (a) Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
16 95814 (EIN: 68-0284486); and (b) Anthony Held, whose address and tax identification number shall
17 be furnished, upon request, three calendar days before payment is due. Payment shall be delivered
18 within ten days of the Effective Date, at the following address:

19 THE CHANLER GROUP
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
Berkeley, CA 94710

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

24 **4.1 Attorney Fees and Costs**

25 The Parties reached an accord on the compensation due to Held and his counsel under general
26 contract principles and the private attorney general doctrine codified at California Code of Civil
27 Procedure §1021.5, for all work performed in this matter. Under these legal principles, Grendene
28 shall pay the total of \$29,000 for fees and costs incurred as a result of investigating, bringing this

1 matter to Grendene's attention, and negotiating a settlement in the public interest. Grendene shall
2 make a separate check payable to "The Chanler Group," issue a separate 1099 for fees and costs
3 (EIN: 94-3171522), and deliver payment within ten days of the Effective Date, to the following
4 address:

5 THE CHANLER GROUP
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held's Release of Grendene**

10 In further consideration of the promises and agreements herein contained, and for the
11 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
12 current agents, representatives, attorneys, including, without limitation, The Chanler Group,
13 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
14 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
15 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,
16 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
17 to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether fixed or
18 contingent, at law or in equity (collectively "Claims"), that were brought or could have been brought
19 against Grendene, its subsidiaries and affiliates including Grendha Shoes Corp, and each of their past
20 and current downstream customers, distributors, wholesalers, licensors, licensees, retailers, or any
21 other person in the course of doing business, and the successors and assigns of any of them, who may
22 use, maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors,
23 managers, employees, members, shareholders, agents, insurers and representatives of each of them
24 (collectively "Releasees") in this matter limited to and arising out of the alleged exposure to the
25 Listed Chemical from the Products distributed or sold by Grendene. The Parties further understand
26 and agree that this release shall not extend upstream to any third parties that manufactured the
27 Products or any component parts thereof, or any distributors or suppliers who sold the Products or
28 any component parts thereof to Defendants.

1 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
2 future, concerning compliance by Grendene and its Releasees with the requirements of Proposition
3 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by
4 Grendene.

5 **5.2 Grendene's Release of Dr. Held**

6 Grendene waives any and all claims against Dr. Held, his attorneys and other representatives,
7 for any and all actions taken or statements made (or those that could have been taken or made) by Dr.
8 Held and his attorneys and other representatives, whether in the course of investigating Claims or
9 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to
10 the 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. Held
15 or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen (15) days
16 after receiving written notice from Grendene 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 Products, then Grendene may
25 provide written notice to Dr. Held of any asserted change in the law, and shall have no further
26 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
27 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Grendene from any
28 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 sent by: (i) personal delivery; (ii) first-class, registered or certified
4 mail, return receipt requested; or (iii) overnight courier on any party by the other party at the
5 following addresses:

6 For Grendene:

7 Alexandre Grendene, President
8 Grendene USA, Inc.
9 2481 Principal Row, Suite 300
10 Orlando, FL 32837

11 with a copy to:

12 John Epperson, Esq.
13 Farella Braun & Martel LLP
14 Russ Building
15 235 Montgomery Street
16 San Francisco, CA 94104

17 For Dr. Held:

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

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

25 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

32 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

33 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a

1 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
2 obtaining such approval, Dr. Held and Grendene and their respective counsel agree to mutually
3 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
4 approval of the Consent Judgment by the Court in a timely manner. For purposes of this section, best
5 efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of
6 the required motion for judicial approval.

7 **13. MODIFICATION**

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

11 The Attorney General shall be served with notice of any proposed modification to this
12 Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Held shall
13 be entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5 if
14 Grendene seeks to modify the terms of this Consent Judgment.

15 **14. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and have read, understood,
17 and agree to all of the terms and conditions hereof.

18 **AGREED TO:** *Anthony E Held*
19

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

AGREED TO:

By:
GRENDENE USA, INC.

APPROVED
By Tony Held at 9:32 am, May 06, 2011

22 Date: _____

Date: _____

23 **IT IS SO ORDERED.**

24 Date: _____

25 _____
26 JUDGE OF THE SUPERIOR COURT

28

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2 obtaining such approval, Dr. Held and Grendene and their respective counsel agree to mutually
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12 Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Held shall
13 be entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5 if
14 Grendene seeks to modify the terms of this Consent Judgment.

15 **14. AUTHORIZATION**

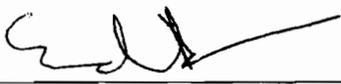
16 The undersigned are authorized to execute this Consent Judgment and have read, understood,
17 and agree to all of the terms and conditions hereof.

18 **AGREED TO:**

19 _____
20 ANTHONY E. HELD, Ph.D., P.E.

21 _____
22 Date: _____

AGREED TO:

23 
24 _____
25 By: EDESEL OLIVEIRA
26 GRENDENE USA, INC.

27 _____
28 Date: 5 / 9 / 11

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT