

1 Brian C. Johnson, State Bar No. 235965  
Josh Voorhees, State Bar No. 241436  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 ANTHONY E. HELD, Ph.D., P.E.

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

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

14 Plaintiff,

15 v.

16 ZAPPOS.COM, INC.; AMAZON.COM, INC.;  
17 and DOES 1-150, inclusive,

18 Defendants.

Case No. RG11560473

**[PROPOSED] CONSENT  
JUDGMENT AS TO DEFENDANT  
AMAZON.COM, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

1       **1. INTRODUCTION**

2               **1.1 Parties**

3               This Consent Judgment is entered into by and among plaintiff Anthony E. Held, Ph.D., P.E.  
4 (“Held”) and defendant Amazon.com, Inc. on behalf of itself and its subsidiaries (collectively  
5 “Defendant”). Held and Defendant are collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

11              Defendant 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              Held alleges that Defendant sold in the State of California footwear containing excessive  
16 levels of di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a  
17 chemical known to the State of California to cause birth defects or other reproductive harm.

18              **1.5 Product Description**

19              The products covered by this Consent Judgment, and to which this Consent Judgment is  
20 specifically limited, are certain models of footwear manufactured and/or imported by Sensi, Inc.  
21 (“Manufacturer”) and sold through the Amazon.com website for delivery to customers located in  
22 California by Defendant. Such items are identified on Exhibit A to this Consent Judgment and  
23 referred to collectively hereinafter as the “Products.”

24              **1.6 Notice of Violation**

25              On October 15, 2010, Held served Defendant and various public enforcement agencies with a  
26 “60-Day Notice of Violation”, a document that informed the recipients of Held’s allegation that  
27 Defendant was in violation of Proposition 65 for failing to warn its customers and consumers in  
28 California that the Products expose users to DEHP.

1           **1.7 Complaint**

2           On or about February 8, 2011, Held, acting in the public interest, filed the instant action  
3 (“Complaint”) against Defendant for the violations of California Health & Safety Code § 25249.6  
4 alleged in the Notice.

5           **1.8 No Admission**

6           Defendant denies the material, factual, and legal allegations contained in Held’s Notice and  
7 Complaint and maintain that all of the products sold through the Amazon.com website for delivery to  
8 customers located in California, including the Products, have been, and are, in compliance with all  
9 laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
10 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent  
11 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion of  
12 law, issue of law, or violation of law, such being specifically denied by Defendant. This section shall  
13 not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under  
14 this Consent Judgment.

15           **1.9 Consent to Jurisdiction**

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

20           **1.10 Effective Date**

21           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the  
22 Court grants the motion for judicial approval of this Consent Judgment contemplated by Section 7.2.

23 **2. INJUNCTIVE RELIEF**

24           Commencing on the Effective Date and continuing thereafter, Defendant represents that it will  
25 no longer sell or distribute the Products through the Amazon.com website for delivery to customers  
26 located in California. Defendant further represents that, unless and until such time as the  
27 Manufacturer certifies in writing to Defendant that the Products contain a maximum DEHP  
28 concentration of 1,000 parts per million (“ppm”) (0.1%), it will continue to refrain from selling or

1 distributing the Products through the Amazon.com website for delivery to customers located in  
2 California. Defendant shall retain any Manufacturer certification of compliance with the above  
3 content standard and make such certification available to Held's counsel upon request. This Section  
4 only applies to sales of the Products through the Amazon.com website for delivery to customers  
5 located in California by Defendant. The Parties understand it shall not apply to sales by third-party  
6 vendors taking place over the Amazon.com website in which Amazon.com or its subsidiaries are not  
7 the seller of record.

### 8 **3. MONETARY PAYMENTS**

#### 9 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

10 Defendant shall pay \$2,250 in civil penalties. This amount reflects a credit of \$2,250 agreed  
11 to by Held in response to Defendant's commitment to Proposition 65 compliance, including, its  
12 agreement to comply with the DEHP content standard established by Section 2. Penalty payments  
13 are to be allocated according to California Health & Safety Code § 25249.12(c)(1) & (d), with  
14 seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental  
15 Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty  
16 amount remitted to Held.

17 Defendant shall issue two checks for the penalty payment as follows: (a) one check payable  
18 to "The Chanler Group in Trust for OEHHA" in the amount of \$1,687.50; and (b) a second check  
19 payable to "The Chanler Group in Trust for Anthony Held" in the amount of \$562.50. Defendant  
20 shall also provide two 1099 forms for its civil penalty payments to: (a) Office of Environmental  
21 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b)  
22 Anthony Held, whose address and tax identification number shall be furnished upon request after this  
23 Consent Judgment is fully executed by the Parties.

#### 24 **3.2 Reimbursement of Fees and Costs**

25 The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
26 reaching terms on the amount of attorney fees and costs to be reimbursed, thereby leaving the issue to  
27 be resolved after the material terms of the agreement had been settled. Shortly after the other  
28 settlement terms had been finalized, Defendant expressed a desire to resolve the fee and cost issue.

1 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his  
2 counsel under general contract principles and the private attorney general doctrine codified at  
3 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees  
4 and costs incurred on appeal, if any. Under these legal principles, Defendant shall pay a total of  
5 \$15,500 for fees and costs incurred investigating, litigating, and enforcing this matter, including the  
6 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's  
7 approval of this Consent Judgment in the public interest. Defendant shall provide payment in the  
8 form of a check payable to "The Chanler Group" and issue a separate 1099 form for fees and costs  
9 paid to The Chanler Group (EIN: 94-3171522).

### 10 **3.3 Payment Address**

11 All payments required by this Section 3 shall be delivered to Held's counsel at the following  
12 address within three calendar days of the Effective Date:

13 The Chanler Group  
14 Attn: Proposition 65 Controller  
15 2560 Ninth Street  
16 Parker Plaza, Suite 214  
17 Berkeley, CA 94710

## 16 **4. FUTURE ENFORCEMENT**

### 17 **4.1 Informal Notice Re: Violation**

18 If, on or after the Effective Date, Plaintiff alleges that Defendant sold or offered a Product for  
19 delivery to California consumers through the Amazon.com website that contains DEHP in excess of  
20 1,000 ppm, before bringing any enforcement action, Plaintiff shall provide an informal notice to  
21 Defendant that includes a copy of the sales receipt or order confirmation from Defendant showing the  
22 date and website from which the Product was purchased, and the identification of the Product,  
23 including the ASIN and/or other identification number(s).

### 24 **4.2 Response to Informal Notice Re: Violation**

25 Within five days of receiving a an informal notice from Plaintiff pursuant to Section 4.1,  
26 Defendant shall remove the Product from its website and notify the vendor of the Product that it may  
27 not offer the Product for sale through the Amazon.com website to customers located in California.  
28 Within ten days of receiving an informal notice from Plaintiff pursuant to Section 4.1, Defendant

1 shall certify in writing to Plaintiff that it has complied with this Section 4.2. Defendant's compliance  
2 with this Section 4.2 shall constitute compliance with the Consent Judgment, and no further  
3 enforcement of this Consent Judgment or of Proposition 65 shall be brought against Defendant for  
4 alleged violations relating to the Products. The Parties further agree that Plaintiff shall be entitled to  
5 recover any reasonable attorneys' fees, investigation or other costs incurred in connection with an  
6 informal notice to Defendant issued after the Effective Date pursuant to this Section 4.

## 7 **5. CLAIMS COVERED AND RELEASED**

### 8 **5.1 Held's Public Release of Proposition 65 Claims**

9 Plaintiff acting on his own behalf and in the public interest releases Defendant and its  
10 subsidiaries, affiliates, sister and related companies, employees, shareholders, directors, insurers,  
11 attorneys, successors, assigns, licensees, and licensors (collectively "Defendant Releasees") from all  
12 claims for violations of Proposition 65 up through the Effective Date based on exposures to DEHP  
13 from the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment  
14 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as  
15 set forth in the Notice.

### 16 **5.2 Held's Individual Release of Claims**

17 Plaintiff, in his individual capacity only and *not* in his representative capacity, also provides a  
18 release to Defendant and Defendant Releasees which shall be effective as a full and final accord and  
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
20 damages, losses, claims, liabilities and demands of plaintiff of any nature, character or kind, whether  
21 known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual  
22 exposures to DEHP in the Products.

### 23 **5.3 Defendants' Release of Held**

24 Defendant, on its own behalf and on behalf of its past and current agents, representatives,  
25 attorneys, successors, and/or assignees, hereby waives any and all claims against Held and his  
26 attorneys and other representatives, for any and all actions taken or statements made (or those that  
27 could have been taken or made) by Held and his attorneys and other representatives, whether in the  
28

1 course of investigating Claims, otherwise seeking to enforce Proposition 65 against it this matter, or  
2 with respect to the Products.

3 **6. MODIFICATION**

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

7 **7. COURT APPROVAL**

8 **7.1** By this Consent Judgment and upon its approval, the Parties waive their respective  
9 right to a trial on the merits, and waive their respective rights to seek appellate review of any and all  
10 interim rulings, including all pleading, procedural, and discovery orders.

11 **7.2** Held shall file a motion seeking judicial approval of this Consent Judgment pursuant  
12 to California Health & Safety Code § 25249.7(f), and Defendant shall support the entry of such  
13 motion.

14 **7.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment and  
15 any and all prior agreements between the parties shall terminate and become null and void, and the  
16 action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b)  
17 no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other  
18 part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be  
19 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties  
20 agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to  
21 resubmit it for approval.

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California  
24 and apply within the State of California.

25 **9. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the  
27 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all  
28 prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed

1 merged. There are no warranties, representations, or other agreements between the Parties except as  
2 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or  
3 implied, other than those specifically referred to in this Consent Judgment have been made by any  
4 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or  
5 otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification,  
6 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the  
7 Party to be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
8 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver  
9 constitute a continuing waiver.

10 **10. NOTICES**

11 Unless specified herein, all correspondence and notices required to be provided pursuant to  
12 this Consent Judgment shall be sent by: (a) personal delivery; (b) first-class, registered or certified  
13 mail, return receipt requested; or (c) a recognized overnight courier on any party by the other party at  
14 the following addresses:

15 For Amazon.com, Inc:

For Held:

16 Attn: General Counsel  
17 By mail:  
18 P.O. Box 81226  
19 Seattle, WA 98108-1226

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

20 By courier or personal delivery:  
21 410 Terry Ave North  
22 Seattle, WA 98109-5210

23 with a copy to:

24 Jeffrey B. Margulies, Esq.  
25 Fulbright & Jaworski, L.L.P.  
26 555 South Flower Street  
27 Forty-First Floor  
28 Los Angeles, CA 90071

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

///

///

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable  
3 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
4 taken together, shall constitute one and the same document.

5 **12. AUTHORIZATION**

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

8  
9 **AGREED TO:**

10 Anthony E Held  
11 ANTHONY E. HELD, PhD., P.E.

12 **APPROVED**  
13 Dated: *By Anthony Held at 11:29 am, Jul 31, 2012*

**AGREED TO:**

Charles S Wright  
AMAZON.COM, INC.

By: Charles S Wright  
(Print Name)

Its: Senior Corporate Counsel  
(Title)

Dated: July 27, 2012

EXHIBIT A  
(PRODUCTS)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Parent ASIN	Parent ASIN Item Name
B0015S3B98	Sensi Women's LaJolla Sandal
B000EYFK3Y	Sensi Women's Capri Sandal
B0015RZGQU	Sensi Women's Capri Ice Sandal
B0015S70NQ	Sensi Women's Aruba Sandal
B000EYBC54	Sensi Women's Ibiza Sandal
B000EYFK3Y	Sensi Women's Capri Sandal
B0015S7HO8	Sensi Women's Monte Carlo Sandal
B000EYBC54	Sensi Women's Ibiza Sandal
B0015S44KS	Sensi Women's Monte Carlo Sandal
B0015S6SBQ	Sensi Big Kid Monte Carlo Sandal
B000EYBBZ0	Sensi Men's Maui Sandal
B000EYHC12	Sensi Men's Regatta Basic Sandal