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

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

18 Plaintiff,

19 v.

20 ZAPPOS.COM, INC.; AMAZON.COM, INC.;;
21 and DOES 1-150, inclusive,

22 Defendants.

Case No. RG11560473

**[PROPOSED] CONSENT
JUDGMENT AS TO DEFENDANT
ZAPPOS.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 Zappos.com, Inc. (“Defendant”). Held and Defendant are collectively
5 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 footwear manufactured and/or imported by Sensi, Inc. (“Manufacturer”) and
21 sold through the Zappos.com website for delivery to customers located in California by Defendant.
22 Such items referred to collectively hereinafter as the “Products.”

23 **1.6 Notice of Violation**

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

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

4 **3. MONETARY PAYMENTS**

5 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

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

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

20 **3.2 Reimbursement of Fees and Costs**

21 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
22 reaching terms on the amount of attorney fees and costs to be reimbursed, thereby leaving the issue to
23 be resolved after the material terms of the agreement had been settled. Shortly after the other
24 settlement terms had been finalized, Defendant expressed a desire to resolve the fee and cost issue.
25 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
26 counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure § 1021.5 for all work performed in this matter, exclusive of fees
28 and costs incurred on appeal, if any. Under these legal principles, Defendant shall pay a total of

1 \$15,500 for fees and costs incurred investigating, litigating, and enforcing this matter, including the
2 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
3 approval of this Consent Judgment in the public interest. Defendant shall provide payment in the
4 form of a check payable to "The Chanler Group" and issue a separate 1099 form for fees and costs
5 paid to The Chanler Group (EIN: 94-3171522).

6 **3.3 Payment Address**

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

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

12 **4. FUTURE ENFORCEMENT**

13 **4.1 Informal Notice Re: Violation**

14 If, on or after the Effective Date, Plaintiff alleges that Defendant sold or offered a Product for
15 delivery to California consumers through the Zappos.com website that contains DEHP in excess of
16 1,000 ppm, before bringing any enforcement action, Plaintiff shall provide an informal notice to
17 Defendant that includes a copy of the sales receipt or order confirmation from Defendant showing the
18 date and website from which the Product was purchased, and the identification of the Product,
19 including the ASIN and/or other identification number(s).

20 **4.2 Response to Informal Notice Re: Violation**

21 Within five days of receiving a an informal notice from Plaintiff pursuant to Section 4.1,
22 Defendant shall remove the Product from its website and notify the vendor of the Product that it may
23 not offer the Product through the Zappos.com website for delivery to customers located in California.
24 Within ten days of receiving an informal notice from Plaintiff pursuant to Section 4.1, Defendant
25 shall certify in writing to Plaintiff that it has complied with this Section 4.2. Defendant's compliance
26 with this Section 4.2 shall constitute compliance with the Consent Judgment, and no further
27 enforcement of this Consent Judgment or of Proposition 65 shall be brought against Defendant for
28 alleged violations relating to the Products. The Parties further agree that Plaintiff shall be entitled to

1 recover any reasonable attorneys' fees, investigation or other costs incurred in connection with an
2 informal notice to Defendant issued after the Effective Date pursuant to this Section 4.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 Held's Public Release of Proposition 65 Claims**

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

12 **5.2 Held's Individual Release of Claims**

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

19 **5.3 Defendants' Release of Held**

20 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
21 attorneys, successors, and/or assignees, hereby waives any and all claims against Held and his
22 attorneys and other representatives, for any and all actions taken or statements made (or those that
23 could have been taken or made) by Held and his attorneys and other representatives, whether in the
24 course of investigating Claims, otherwise seeking to enforce Proposition 65 against it this matter, or
25 with respect to the Products.

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1 **6. MODIFICATION**

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

5 **7. COURT APPROVAL**

6 **7.1** By this Consent Judgment and upon its approval, the Parties waive their respective
7 right to a trial on the merits, and waive their respective rights to seek appellate review of any and all
8 interim rulings, including all pleading, procedural, and discovery orders.

9 **7.2** Held shall file a motion seeking judicial approval of this Consent Judgment pursuant
10 to California Health & Safety Code § 25249.7(f), and Defendant shall support the entry of such
11 motion.

12 **7.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment and
13 any and all prior agreements between the parties shall terminate and become null and void, and the
14 action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b)
15 no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other
16 part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be
17 admissible in evidence for any purpose in this action, or in any other proceeding; and (c) the Parties
18 agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to
19 resubmit it for approval.

20 **8. GOVERNING LAW**

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

23 **9. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all
26 prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed
27 merged. There are no warranties, representations, or other agreements between the Parties except as
28 expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or

1 implied, other than those specifically referred to in this Consent Judgment have been made by any
2 Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or
3 otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification,
4 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the
5 Party to be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or
6 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
7 constitute a continuing waiver.

8 **10. NOTICES**

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

13 For Zappos.com, Inc:

14 Legal Department
15 Zappos.com, Inc.
16 2280 Corporate Circle, Suite 100
Henderson, NV 89074

17 with a copy to:

18 Jeffrey B. Margulies, Esq.
19 Fulbright & Jaworski, L.L.P.
20 555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071

For Held:

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

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

23 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

AGREED TO:

AGREED TO:



ANTHONY E. HELD, PhD., P.E.

ZAPPOS.COM, INC.

Dated:  _____

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

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ANTHONY E. HELD, PhD., P.E.



ZAPPOS.COM, INC.

Dated: _____

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____