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

11 Attorneys for Defendant
12 CASTLE HILL APPAREL INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF MARIN

15 UNLIMITED CIVIL JURISDICTION

16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.

19 CASTLE HILL APPAREL INC.; and DOES
20 1-150, inclusive,

21 Defendants.
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) Case No. CIV-1103513
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) **[PROPOSED] CONSENT JUDGMENT**
) **AS TO CASTLE HILL APPAREL INC.**

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held Ph.D., P.E. and Castle Hill Apparel Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held” or “Plaintiff”) and defendant Castle Hill Apparel Inc. (“Castle Hill” or “Defendant”),
5 with Held and Castle Hill collectively referred to as the “Parties”.

6 **1.2 Anthony E. Held, Ph.D., P.E.**

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

10 **1.3 Castle Hill Apparel Inc.**

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

14 **1.4 General Allegations**

15 Held alleges that Castle Hill has manufactured, imported, distributed, sold, and/or offered
16 for sale belts containing di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65
17 warnings. DEHP is on the Proposition 65 list and is known to cause birth defects and other
18 reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: belts
21 containing DEHP including, but not limited to, *Karin Stevens Petites Dress with Belt, Style*
22 *201157KF (#7 44290 98712 1)* manufactured, imported, distributed, sold, and/or offered for sale by
23 Castle Hill, referred to hereinafter as the “Products”.

24 “Additional Products” that are covered by this Consent Judgment are defined as belts
25 containing butyl benzyl phthalate (“BBP”) and/or di-n-butyl phthalate (“DBP”), as well as jewelry,
26 apparel, including gloves and headwear, bag charms and zipper pulls, containing DEHP, BBP,
27 and/or DBP, manufactured, imported, distributed, sold, and/or offered for sale by Castle Hill,
28 collectively referred to hereinafter as the “Additional Products”.

1 **1.6 Notice of Violation**

2 On April 19, 2011, Held served Castle Hill and various public enforcement agencies with a
3 document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with
4 notice of alleged violations of California Health and Safety Code § 25249.6 based Castle Hill’s
5 alleged failure to warn consumers that the Products exposed users in California to DEHP. To the
6 best of the Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the
7 Notice.

8 **1.7 Complaint**

9 On July 15, 2011, Held filed a complaint in the Superior Court in and for the County of
10 Marin against Castle Hill Apparel Inc., and Does 1 through 150, *Held v. Castle Hill Apparel Inc. et*
11 *al.*, Case No. CIV-1103513 (the “Action” or “Complaint”), alleging violations of California Health
12 and Safety Code § 25249.6, based on the alleged exposures to DEHP contained in the Products sold
13 by Castle Hill.

14 **1.8 No Admission**

15 Castle Hill denies the material, factual and legal allegations contained in Held’s Notice and
16 Complaint and maintains that all products that it has manufactured, imported, distributed, sold,
17 and/or offered for sale in California, including the Products, have been and are in compliance with
18 all laws. Nothing in this Consent Judgment shall be construed as an admission by Castle Hill of any
19 fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
20 constitute or be construed as an admission by Castle Hill of any fact, finding, conclusion, issue of
21 law, or violation of law. However, this section shall not diminish or otherwise affect Castle Hill’s
22 obligations, responsibilities, and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has
25 jurisdiction over Castle Hill as to the allegations contained in the Complaint, that venue is proper in
26 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 15,
3 2012.

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

5 **2.1 Reformulation Standards**

6 Reformulated Products are defined as those Products and Additional Products containing
7 concentrations less than 0.1 percent (1,000 parts per million) each of DEHP, BBP, and DBP in each
8 accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing
9 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
10 the purpose of determining DEHP, BBP, and DBP content in a solid substance, hereinafter “3P
11 Standard”.

12 **2.2 Reformulation Commitment**

13 As of August 15, 2012, all Products and Additional Products manufactured, imported,
14 distributed, sold, and/or offered for sale in the State of California by Castle Hill shall be Products
15 and Additional Products that qualify as Reformulated Products that meet the 3P Standard as defined
16 in section 2.1 above. In addition, within thirty (30) days of execution of this Consent Judgment by
17 both Parties, Castle Hill shall provide the 3P Standard to its then-current Vendors of Products and
18 Additional Products that will be sold or offered for sale to California citizens and shall instruct each
19 Vendor to use reasonable efforts to provide Products and Additional Products that comply with the
20 3P Standard expeditiously. For purposes of this Consent Judgment the term “Vendor” means a
21 person or entity that manufactures, imports, distributes, sells, or otherwise supplies Products and
22 Additional Products to Castle Hill.

23 **2.3 Product Warnings**

24 Commencing on the Effective Date and continuing through August 15, 2012, Castle Hill
25 shall, for all Products and Additional Products other than Reformulated Products, provide clear and
26 reasonable warnings as set forth in subsections 2.3(a) and (b). Each warning shall be prominently
27 placed with such conspicuousness as compared with other words, statements, designs, or devices as
28 to render it likely to be read and understood by an ordinary individual under customary conditions

1 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
2 understands to which *specific* Product and Additional Product the warning applies, so as to
3 minimize the risk of consumer confusion.

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

5 (i) **Product Labeling.** Defendant shall affix a warning to the packaging,
6 labeling, or directly on each Product and Additional Product sold in retail outlets in California by
7 Defendant or any person selling the Products and/or Additional Products, that states:

8 **WARNING:** This product contains one or more phthalate
9 chemicals, including DEHP, BBP, and DBP,
10 known to the State of California to cause birth
11 defects and other reproductive harm.¹

12 (ii) **Point-of-Sale Warnings.** Alternatively, Defendant may provide
13 warning signs in the form below to its customers in California with instructions to post the
14 warnings in close proximity to the point of display of the Products and Additional Products. Such
15 instruction sent to Defendant's customers shall be sent by certified mail, return receipt requested.

16 **WARNING:** This product contains one or more phthalate
17 chemicals, including DEHP, BBP, and DBP,
18 known to the State of California to cause birth
19 defects and other reproductive harm.

20 Where more than one Product and/or Additional Product is sold in proximity to other like
21 items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section
22 2.1), the following statement must be used:²

23 **WARNING:** This product contains one or more phthalate
24 chemicals, including DEHP, BBP, and DBP,
25 known to the State of California to cause birth
26 defects and other reproductive harm:

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

28 ¹For all warning labels mandated by Section 2 of this Consent Judgment, to the extent that the Product and/or Additional Product does not contain DEHP, BBP, and/or DBP, such phthalate(s) that is(are) not present in the Product and/or Additional Product shall not be included in the mandated warning.

²For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and/or Additional 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 Castle Hill sells
2 Products and/or Additional Products via mail order catalog and/or the internet, to customers located
3 in California, after the Effective Date, that are not Reformulated Products, Castle Hill shall provide
4 a warning for such Products and Additional Products sold via mail order catalog or the internet to
5 California residents. Warnings given in the mail order catalog or on the internet shall identify the
6 *specific* Product and Additional Product to which the warning applies as further specified in
7 Sections 2.3(b)(i) and (ii).

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

12 **WARNING:** This product contains one or more phthalate
13 chemicals, including DEHP, BBP, and DBP,
14 known to the State of California to cause birth
 defects and other reproductive harm.

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

20 **WARNING:** Certain products identified with this symbol
21 ▼ and offered for sale in this catalog contain
22 one or more phthalate chemicals, including
 DEHP, BBP, and DBP, known to the State of
 California to cause birth defects and other
 reproductive harm.

23 The designated symbol shall appear on the same page and in close proximity to the display
24 and/or description of the Product and Additional Product. On each page where the designated
25 symbol appears, Castle Hill shall provide a header or footer directing the consumer to the warning
26 language and definition of the designated symbol.

27 **(ii) Internet Website Warning.** A warning may be given in conjunction
28 with the sale of the Products and/or Additional Product via the internet, provided it appears either:

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

8 **WARNING:** This product contains one or more phthalate
9 chemicals, including DEHP, BBP, and DBP,
10 known to the State of California to cause birth
defects and other reproductive harm.

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

15 **WARNING:** Products identified on this page with the
16 following symbol ▼ contain one or more
17 phthalate chemicals, including DEHP, BBP, and
DBP, known to the State of California to cause
birth defects and other reproductive harm.

18 **3. PAYMENT OF PENALTIES**

19 **3.1 Civil Penalty**

20 In settlement of all the claims referred to in this Consent Judgment, Castle Hill shall pay
21 \$1,500 in civil penalties to be apportioned in accordance with Health & Safety Code section
22 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for the State of
23 California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
24 25% of these penalty monies earmarked for Anthony E. Held, Ph.D., P.E.. This penalty reflects a
25 credit of \$3,000 based on Castle Hill's commitment to reformulate the Products and Additional
26 Products pursuant to Section 2 above.

1 **3.2 Reimbursement of Plaintiff's Fees and Costs**

2 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Castle Hill then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Held
7 and his counsel under general contract principles and the private attorney general doctrine codified
8 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
9 fees that may be incurred on appeal. Under these legal principles, Castle Hill shall pay the amount
10 of \$20,000 for fees and costs incurred investigating, litigating and enforcing this matter, including
11 the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
12 approval of this Consent Judgment in the public interest.

13 **3.3 Payment Procedures**

14 **3.3.1 Funds Held In Trust:** All payments made under this Consent Judgment
15 shall be delivered within fifteen days of execution of this Consent Judgment to either The Chanler
16 Group or the attorney of record for Castle Hill, and shall be held in trust pending the Court's
17 approval of this Consent Judgment.

18 Payments delivered to The Chanler Group shall be made payable, as follows:

- 19 (a) One check made payable to "The Chanler Group in Trust for
20 OEHHA" in the amount of \$1,125;
21 (b) One check made payable to "The Chanler Group in Trust for
22 Anthony E. Held, Ph.D., P.E." in the amount of \$375 and
23 (c) One check made payable to "The Chanler Group in Trust" in the
24 amount of \$20,000.

25 Payments delivered to Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP shall be
26 made payable, as follows:

- 27 (a) One check made payable to "Wolf, Rifkin, Shapiro, Schulman &
28 Rabkin, LLP in Trust for OEHHA" in the amount of \$1,125;

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- (b) One check made payable to “Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$375; and
- (c) One check made payable to “Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP in Trust for The Chanler Group” in the amount of \$20,000.

If Castle Hill elects to deliver payments to its attorney of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within two days of the date of the hearing on which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the amount of \$1,125;
- (b) One check made payable to “The Chanler Group in Trust for Anthony E. Held, Ph.D., P.E.” in the amount of \$375; and
- (c) One check made payable to “The Chanler Group” in the amount of \$20,000.

3.3.2 Issuance of 1099 Forms. After the Consent Judgment has been approved Castle Hill shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,125;
- (b) The second 1099 shall be issued to Anthony E. Held, Ph.D., P.E., whose address and tax identification number shall be furnished upon request, in the amount of \$375; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$20,000.

1 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
2 the following payment address:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

10 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf
11 of himself and Defendant, of any violation of Proposition 65 that was or could have been asserted
12 by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under common
13 ownership, directors, officers, employees, attorneys, and each entity to whom Defendant directly
14 or indirectly distributes or sells Products, including but not limited to downstream distributors,
15 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
16 (“Releasees”), based on their failure to warn about the alleged exposures to DEHP contained in the
17 Products that were sold by Defendant.

18 **4.2 Held’s Public Release of Proposition 65 Claims**

19 Plaintiff acting on his own behalf and in the public interest releases Castle Hill, its parents,
20 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
21 attorneys, and each entity to whom Castle Hill directly or indirectly distributes or sells Products
22 including, but not limited to, Darian Group, Inc., downstream distributors, wholesalers, customers,
23 retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”) from all claims
24 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from
25 the Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
26 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
27 as set forth in the Notice.

28 **4.3 Held’s Individual Release of Claims**

 Held also, in his individual capacity only and *not* in his representative capacity, provides a
release herein which shall be effective as a full and final accord and satisfaction, as a bar to all



1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities and demands of plaintiffs of any nature, character or kind, whether known or unknown,
3 suspected or unsuspected, against Castle Hill and Releasees, limited to and arising out of alleged or
4 actual exposures to phthalates in the Products and Additional Products manufactured, imported,
5 distributed, sold, and/or offered for sale by Defendant in the State of California.

6 In addition, Held acknowledges that he is familiar with Section 1542 of the California Civil
7 Code, which provides as follows:

8 **A general release does not extend to claims which the creditor does**
9 **not know or suspect to exist in his or her favor at the time of**
10 **executing the release, which if known by him or her must have**
11 **materially affected his or her settlement with the debtor.**

12 Held, in his individual capacity only and *not* in his representative capacity, on behalf of
13 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
14 relinquishes any and all rights and benefits which he may have under, or which may be conferred
15 on him by the provisions of Section 1542 of the California Civil Code as well as under any other
16 state or federal statute or common law principle of similar effect, to the fullest extent that he may
17 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
18 intention, the release hereby given shall be and remain in effect as a full and complete release
19 notwithstanding the discovery or existence of any such additional or different claims or facts
20 arising out of the Notice and/or the alleged failure to warn about exposures to DEHP in the
21 Products.

22 **4.4 Castle Hill's Release of Held**

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

1 In addition, Castle Hill acknowledges that it is familiar with Section 1542 of the California
2 Civil Code, which provides as follows:

3 **A general release does not extend to claims which the creditor does**
4 **not know or suspect to exist in his or her favor at the time of**
5 **executing the release, which if known by him or her must have**
6 **materially affected his or her settlement with the debtor.**

7 Castle Hill, on behalf of itself and its agents, attorneys, representatives, successors and
8 assigns, expressly waives and relinquishes any and all rights and benefits which it may have
9 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
10 Code as well as under any other state or federal statute or common law principle of similar effect,
11 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
12 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as
13 a full and complete release notwithstanding the discovery or existence of any such additional or
14 different claims or facts arising out of the Notice and/or the alleged failure to warn about
15 exposures to DEHP in the Products.

16 **5. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
19 after it has been fully executed by all parties.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California
26 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
27 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
28 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
preemption or rendered inapplicable by reason of law generally as to the Products and/or Additional

1 Products, then Castle Hill shall have no further obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, the Products and/or Additional Products are so affected.

3 **8. NOTICES**

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

8 For Castle Hill:

9 Richard Feldman, President
10 Castle Hill Apparel Inc.
11 1400 Broadway, 25th Floor
12 New York, New York 10018

To Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

12 With a copy to:

13 Hany Fangary
14 Wolf, Rifkin, Shapiro, Schulman
& Rabkin, LLP
15 11400 West Olympic Boulevard, 9th Floor
Los Angeles, CA 90064-1582

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

19 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
20 each of which shall be deemed an original, and all of which, when taken together, shall constitute
21 one and the same document. A facsimile or pdf signature shall be as valid as the original.
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23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 Plaintiff and his attorneys agree to comply with the reporting form requirements referenced
25 in California Health & Safety Code § 25249.7(f).
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11. ADDITIONAL POST EXECUTION ACTIVITIES

Plaintiff and Castle Hill agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft and file, and Castle Hill shall join. If any third party objection to the noticed motion is filed, Plaintiff and Castle Hill shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. 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.

13. 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 of this Consent Judgment.

AGREED TO:

AGREED TO:

APPROVED

By Anthony Held at 11:31 am, Mar 12, 2012

Date:

Date:

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

By: *[Signature]*
Richard Feldman, President
Castle Hill Apparel, Inc.