

1 Clifford A. Chanler, State Bar No. 135534
2 Jennifer Henry, State Bar No. 208221
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
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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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 DEAN STREET GROUP LLC; CP
16 INTERNATIONAL CORP.; and DOES 1-150,
17 inclusive,

18 Defendants.

Case No. _____

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff, Dr. Anthony E. Held,
4 Ph.D., P.E., (“Dr. Held” or “Plaintiff”) and defendants, Dean Street Group LLC (“Dean Street”)
5 and CP International Corp. (“CPI”) (together “Defendants”), with Plaintiff and Defendants
6 collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Defendants each employ ten or more individuals and is a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Held alleges that Defendants have manufactured, distributed, and/or sold in the State
17 of California, footwear containing one or more of Di(2-ethylhexyl) phthalate (“DEHP”) and Di-n-
18 butyl phthalate (“DBP”) without first providing a “clear and reasonable warning,” as required by
19 Proposition 65. DEHP and DBP are listed as reproductive toxicants pursuant to Proposition 65
20 and shall be referred to hereinafter as the “Listed Chemicals.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as footwear
23 containing one or more of the Listed Chemicals including, but not limited to, the *Bahama Bay*
24 *Sandals, Stock #41210 (#8 38640 01375 9)* and that are sold, manufactured or distributed by
25 Defendants in California. All such items shall be referred to herein as the “Products”.

26 **1.6 Notices of Violation**

27 On or about April 25, 2011, Dr. Held served Rite Aid Hdqtrs Corp. (“Rite Aid”) and
28 various public enforcement agencies with a document entitled “60-Day Notice of Violation” that

1 provided the public enforcers and Rite Aid with notice of alleged violations of Health & Safety
2 Code § 25249.6 for failing to warn consumers that the Products Defendants manufactured,
3 distributed and/or sold exposed users in California to excessive amounts of the DEHP (“Notice”).
4 On or about October 31, 2011, Dr. Held served Defendants and various public enforcement
5 agencies with a document entitled “Supplemental 60-Day Notice of Violation” that provided the
6 public enforcers and Defendants with notice of alleged violations of Health & Safety Code §
7 25249.6 for failing to warn consumers that the Products, which Defendants manufactured,
8 distributed and/or sold, exposed users in California to excessive amounts of DEHP and/or DBP
9 (“Supplemental Notice”).

10 **1.7 Complaint**

11 On or about December 15, 2011, Dr. Held, acting in a representative capacity in the
12 interest of the general public in California, filed or will file the instant action in the Superior
13 Court for the County of Alameda alleging violations of Health & Safety Code § 25249.6 based on
14 the exposures to the Listed Chemicals contained in the Products manufactured, distributed, and/or
15 sold by Defendants (“Complaint”).

16 **1.8 No Admission**

17 Defendants deny the material, factual, and legal allegations contained in the Notice,
18 Supplemental Notice and Complaint, and maintain that all of the products they have
19 manufactured, distributed, and/or sold in California, including the Products, have been, and are, in
20 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
21 by Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor shall
22 compliance with this Consent Judgment constitute or be construed as an admission by Defendants
23 of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically
24 denied by Defendants. However, this Section shall not diminish or otherwise affect the Parties’
25 obligations, responsibilities, and/or duties under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper

1 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
2 of this Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean October 31,
5 2011.

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Reformulation Commitment**

8 Starting on February 29, 2012 (the “Compliance Date”), Defendants shall not ship, sell, or
9 offer to be shipped for sale in California any Product unless it is a “Reformulated Product.”
10 Reformulated Products are defined as those Products which yield less than 1,000 parts per million
11 (“ppm”) of each of DEHP and/or DBP in each Accessible Component when analyzed pursuant to
12 EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
13 state agencies for the purpose of determining DEHP and/or DBP content in a solid substance. For
14 the purposes of this Section 2.1, “Accessible Component” means a polyvinyl chloride or other
15 soft plastic vinyl or synthetic leather component of a Product that could be touched by a person
16 during reasonably foreseeable use.

17 **3. MONETARY PAYMENTS**

18 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

19 Dean Street shall make a payment of \$8,000 to be apportioned in accordance with Health
20 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
21 for the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)
22 and the remaining 25% of these penalty monies earmarked for Dr. Held.

23 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve the non-
25 monetary terms of this dispute before reaching terms on the amount of attorney fees and costs to
26 be reimbursed to them, thereby leaving this fee issue to be resolved after the non-monetary
27 material terms of the agreement had been settled. The Parties then agreed to resolve the fee and
28 cost issue shortly after the other settlement terms had been tentatively finalized, subject to

1 agreement on fees. The Parties then attempted to (and did) reach an accord on the compensation
2 due to Dr. Held and his counsel under general contract principles and the private attorney general
3 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
4 this matter, except fees that may be incurred on appeal. Under these legal principles, Dean Street
5 shall pay the amount of \$33,500 for fees and costs incurred investigating, litigating and
6 enforcing this matter, including the fees and costs incurred (and yet to be incurred)
7 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the
8 public interest.

9 **3.3 Payment Procedures**

10 **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2
11 shall delivered on or before December 31, 2011, to either The Chanler Group or the attorney of
12 record for Dean Street, and shall be held in trust pending the Court's approval of this Consent
13 Judgment.

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

- 15 (a) One check made payable to "The Chanler Group in Trust for
16 OEHHA" in the amount of \$6,000;
17 (b) One check made payable to "The Chanler Group in Trust for Dr.
18 Anthony Held" in the amount of \$2,000; and
19 (c) One check made payable to "The Chanler Group in Trust" in the
20 amount of \$33,500.

21 Payments delivered to Barg Coffin Lewis & Trapp, LLP shall be made payable,
22 as follows:

- 23 (a) One check made payable to "Barg Coffin Lewis & Trapp, LLP in
24 Trust for OEHHA" in the amount of \$6,000;
25 (b) One check made payable to "Barg Coffin Lewis & Trapp, LLP in
26 Trust for Dr. Anthony Held in the amount of \$2,000; and
27 (c) One check made payable to "Barg Coffin Lewis & Trapp, LLP in
28 Trust for The Chanler Group" in the amount of \$33,500.

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

- 6 (a) One check made payable to “The Chanler Group in Trust for
7 OEHHA” in the amount of \$6,000;
- 8 (b) One check to “The Chanler Group in Trust for Dr. Anthony Held”
9 in the amount of \$2,000; and
- 10 (c) One check to “The Chanler Group” in the amount of \$33,500.

11 **3.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
12 and the settlement funds have been transmitted to plaintiff’s counsel, Dean Street shall issue
13 three separate 1099 forms, when reasonably available, as follows:

- 14 (a) The first 1099 shall be issued to the Office of Environmental Health
15 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
16 of \$6,000;
- 17 (b) The second 1099 shall be issued to Dr. Held in the amount of \$2,000,
18 whose address and tax identification number shall be furnished upon request; and
- 19 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522)
20 in the amount of \$33,500.

21 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
22 to the following payment address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
28

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations.** This
3 Consent Judgment is a full, final and binding resolution between Dr. Held, on behalf of himself
4 and the public, and Defendants, of any violation of Proposition 65 that was or could have been
5 asserted by Dr. Held against Defendants, or their respective parents, subsidiaries, affiliated
6 entities that are under common ownership, directors, officers, employees, attorneys, and each
7 entity to whom each Defendant directly or indirectly distributes or sells Products, including but
8 not limited to downstream distributors, wholesalers, customers, retailers, including without
9 limitation Rite Aid Hdqtrs Corp. (“Downstream Releasees”) and their respective parents,
10 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
11 attorneys), franchisees, cooperative members, licensors, and licensees of each Downstream
12 Releasees (Defendants and the Downstream Releasees and the other entities identified in this
13 Section 4.1 are collectively referred to herein as “Releasees”) based on their failure to warn
14 about alleged exposures to the Listed Chemicals contained in the Products that were sold by
15 Defendants.

16 **4.2 Dr. Held’s Public Release of Proposition 65 Claims.** In further consideration
17 of the promises and agreements herein contained, Dr. Held on behalf of himself, his past and
18 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
19 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
20 form of legal action and releases all claims, including, without limitation, all actions, and causes
21 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
22 penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and
23 attorneys’ fees, but exclusive of fees and costs on appeal -- limited to and arising under
24 Proposition 65 with respect to the Listed Chemicals in the Products sold by Defendants
25 (collectively “claims”), against Releasees.

26 Compliance with the terms of this Consent Judgment by Defendants constitutes
27 compliance with Proposition 65 with respect to the Listed Chemicals in the Defendants’ Products
28 including without limitation such Products distributed and/or sold by Releasees.

1 **4.3 Dr. Held's Individual Release of Claims.** Dr. Held also, in his individual
2 capacity only and *not* in his representative capacity, provides a release herein which shall be
3 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
4 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
5 Dr. Held of any nature, character or kind, whether, suspected or unsuspected, limited to and
6 arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured,
7 distributed or sold by Defendants.

8 **4.4 Defendants' Release of Dr. Held.** Defendants, each on behalf of itself, its past
9 and current agents, representatives, attorneys, successors, and/or assignees, hereby waive any
10 and all claims against Dr. Held, his attorneys and other representatives, for any and all actions
11 taken or statements made (or those that could have been taken or made) by Dr. Held and his
12 attorneys and other representatives, whether in the course of investigating claims or otherwise
13 seeking to enforce Proposition 65 against it in this matter with respect to the Products.

14 **5. SEVERABILITY**

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

18 **6. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within twelve
21 months after it has been fully executed by all Parties.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
25 reason of law generally, or as to the Products, then Defendants shall provide written notice to Dr.
26 Held of any asserted change in the law, and shall have no further obligations pursuant to this
27 Consent Judgment with respect to, and to the extent that, the Products are so affected.

28

1 **8. NOTICES**

2 When any Party is entitled to receive any notice under this Consent Judgment, the notice
3 shall be sent by certified mail to the person(s) identified below:

4 To Dean Street:

5 William Lenich
6 Dean Street Group LLC
7 155 North Dean Street
8 Englewood, NJ 07631

8 To CPI:

9 Robert Cook
10 CP International Corp.
11 155 North Dean Street
12 Englewood, NJ 07631

12 With a copy to:

13 Joshua A. Bloom, Esq.
14 Barg Coffin Lewis & Trapp, LLP
15 350 California Street, 22nd Floor
16 San Francisco, CA 94104-1435

17 and

18 Ron Chima, Senior Counsel
19 Rite Aid Hdqtrs Corp.
20 30 Hunter Lane
21 Camp Hill, PA 17011

22 To Dr. Held:

23 The Chanler Group
24 Attn: Proposition 65 Coordinator
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 Any Party may modify the person and address to whom the notice is to be sent by sending each
other Party notice by certified mail and/or other verifiable form of written communication.

29 **9. COUNTERPARTS, FACSIMILE SIGNATURES**

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

1 **10. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 Dr. Held shall prepare and file all documents necessary to obtain court approval of this
3 Consent Judgment. The Parties acknowledge that, pursuant to California Health & Safety Code §
4 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Dr.
5 Held shall make best efforts to provide to Defendants for review no later than thirty (30) days
6 after the Complaint is filed a draft Motion to Approve the Consent Judgment and supporting
7 papers, and shall make best efforts to file such motion and supporting papers no later than forty
8 (40) days after the Complaint is filed. In furtherance of obtaining such approval, Dr. Held and
9 Defendants and their respective counsel agree to mutually employ their best efforts, including, at
10 a minimum, cooperating on the drafting and filing of any papers (including, but not limited to,
11 any Reply Memorandum if needed) in support of the required motion for judicial approval, to
12 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
13 Judgment by the Court in a timely manner.

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
16 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
17 Court.

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this
21 Consent Judgment.

22 **13. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the
24 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
28 to exist or to bind any of the parties.

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AGREED TO:

ANTHONY E. HELD, PHD., P.E.

Anthony E Held

AGREED TO:

DEAN STREET GROUP LLC

By: _____

Its: _____

Date: **APPROVED**
By Tony at 7:27 pm, Oct 31, 2011

Date: _____

AGREED TO:

CP INTERNATIONAL CORP.

By: _____

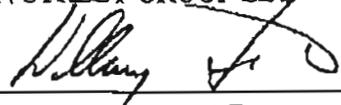
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AGREED TO:
ANTHONY E. HELD, PHD., P.E.

AGREED TO:
DEAN STREET GROUP LLC

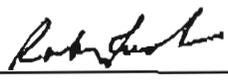
By: 

Its: President

Date: _____

Date: 10-31-11

AGREED TO:
CP INTERNATIONAL CORP.

By: 

Its: Chairman / President

Date: 10.31.11