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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION
12

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

14 Plaintiff,

15 v.

16 SHELBY GROUP INTERNATIONAL,
INC.; and DOES 1-150, inclusive,

17 Defendants.
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) Case No. RG13703341

) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT SHELBY GROUP**
) **INTERNATIONAL, INC.**

) Date:

) Time:

) Dept: 16

) Judge: Hon. Lawrence Appel

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, PhD., P.E. and Shelby Group International, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PhD.,
4 P.E. (“Held” or “Plaintiff”) and defendant Shelby Group International, Inc. (“Shelby” or
5 “Defendant”), with Held and Shelby collectively referred to as the “Parties.”

6 **1.2 Anthony E. Held, PhD., P.E.**

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

10 **1.3 Shelby Group International, Inc.**

11 Shelby 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 &
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Held alleges that Shelby has manufactured, imported, distributed and/or sold vinyl/PVC
16 rainwear causing an exposure to lead for use in the State of California without the requisite
17 Proposition 65 warnings. Lead is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause cancer.

19 **1.5 Notice of Violation.**

20 On July 24, 2013, Held served Shelby and various public enforcement agencies with a
21 document entitled “60-Day Notice of Violation” alleging that Shelby violated Proposition 65 by
22 failing to warn consumers that vinyl/PVC rainwear including, but not limited to, the *River City*
23 *Classic 200 Series Suit, Style No. 2403*, exposed users in California to lead (“Notice”).

24 **1.6 Complaint.**

25 On November 15, 2013, Held filed a complaint in the Superior Court in and for the
26 County of Alameda against Shelby and Does 1 through 150, *Held v. Shelby Group International,*
27 *Inc., et al.*, Case No. RG13703341 (“Action”), alleging violations of California Health & Safety
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1 Code § 25249.6, based on the alleged exposures to lead contained in certain vinyl/PVC rainwear
2 sold by Shelby in the State of California.

3 **1.7 No Admission.**

4 The Parties enter into this Consent Judgment as a full and final settlement of all claims
5 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
6 arising out of the facts or conduct alleged therein. Shelby denies the material, factual and legal
7 allegations contained in the Notice and the Complaint, and maintains that all of the products it
8 has manufactured, imported, distributed and/or sold in the State of California, including the
9 Covered Products, have been, and are, in compliance with all laws. By execution of this
10 Consent Judgment and agreeing to comply with its terms, Shelby does not admit any facts or
11 conclusions of law, including, but not limited to, any facts or conclusions of law suggesting or
12 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
13 requirements relating to lead in Covered Products, such being specifically denied by Shelby.
14 Nothing in this Consent Judgment shall be construed as an admission by Shelby of any fact,
15 conclusion of law, issue of law or violation of law, nor shall compliance with this Consent
16 Judgment constitute or be construed as an admission by Shelby of any fact, conclusion of law,
17 issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or
18 impair any right, remedy, argument or defense Shelby may have in this or any other future legal
19 proceedings. This Consent Judgment is the product of negotiation and compromise and is
20 accepted by Shelby for purposes of settling, compromising, and resolving issues disputed in this
21 action. However, this Section shall not diminish or otherwise affect the obligations,
22 responsibilities and duties of Shelby under this Consent Judgment.

23 **1.8 Consent to Jurisdiction.**

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

1 **2. DEFINITIONS**

2 **2.1** “Covered Product[s]” means any vinyl/PVC rainwear manufactured, imported,
3 distributed and/or sold in the State of California by Shelby including, but not limited to, the
4 *River City Classic 200 Series Suit, Style No. 2403.*

5 **2.2** “Effective Date” means March 1, 2014.

6 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
7 supplies a product to Shelby.

8 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

9 **3.1 Reformulation Commitment and Standards.**

10 As of the Effective Date, Shelby shall only manufacture Covered Products which
11 contain less than or equal to 100 parts per million of lead in each Accessible Component when
12 analyzed pursuant to EPA testing methodologies utilized by federal or state agencies for the
13 purpose of determining lead content in a solid substance (“Reformulated Covered Products”).
14 By entering into this Consent Judgment, the Parties do not intend to expand or restrict any
15 obligations or responsibilities that may be imposed upon Shelby by laws other than Proposition
16 65, nor do the Parties intend this Consent Judgment to affect any defenses available to Shelby
17 under such other laws.

18 **3.2 Vendor Notification Requirement.**

19 To the extent it has not already done so, on or before the Effective Date, Shelby shall
20 provide the reformulation standards specified in Section 3.1 for Reformulated Covered Products
21 to any and all of its vendors of Covered Products or their component parts that will be sold or
22 offered for sale to California consumers, and shall instruct each vendor to provide only
23 Reformulated Covered Products or component parts that meet the reformulation standards for
24 Reformulated Covered Products in Section 3.1 above.

25 **4. MONETARY PAYMENTS**

26 In settlement of all the claims referred to in this Consent Judgment, Shelby shall pay a
27 total of \$40,000.00 in civil penalties in accordance with this Section. Each penalty payment will
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1 be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with
2 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
3 ("OEHHA") and the remaining 25% of the penalty remitted to Held, as follows:

4 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §**
5 **25249.7(b).**

6 Shelby shall pay an initial civil penalty in the amount of \$10,000.00 on or before March
7 1, 2014. Shelby shall issue two separate checks to: (a) OEHHA, in the amount of \$7,500.00; and
8 (b) "The Chanler Group in Trust for Anthony E. Held, PhD., P.E." in the amount of \$2,500.00.
9 All penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

10 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

11 Shelby shall pay a final civil penalty in the amount \$30,000.00 on or before June 15,
12 2014. The final civil penalty shall be waived in its entirety, if, on or before June 1, 2014, an
13 Officer of Shelby certifies in writing that it, from and after March 1, 2014, has manufactured for
14 sale in California only Reformulated Covered Products and that it will continue to manufacture,
15 distribute, sell and offer for sale in California only Reformulated Covered Products. Such
16 certification must be received by The Chanler Group on or before June 1, 2014. The
17 certification in lieu of paying the final civil penalty provided by this Section is a material term,
18 and time is of the essence. Unless waived, Shelby shall issue two separate checks for its final
19 civil penalty payment to: (a) OEHHA, in the amount of \$22,500.00; and (b) "The Chanler Group
20 in Trust for Anthony E. Held, PhD., P.E." in the amount of \$7,500.00.

21 **4.3 Reimbursement of Plaintiff's Fees and Costs.**

22 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee
24 issue to be resolved after the material terms of the agreement had been settled. Shelby then
25 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
26 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
27 to Held and his counsel under general contract principles and the private attorney general
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1 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed
2 (and to be performed) in this matter, except fees that may be incurred in connection with a third-
3 party, including the Office of the Attorney General, appeal (if any). Under these legal principles,
4 Shelby shall pay the amount of \$40,000.00 to reimburse Plaintiff's fees and costs incurred
5 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
6 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
7 Judgment in the public interest, no later than March 1, 2014. This payment shall be made
8 payable to The Chanler Group and shall be delivered to the address in Section 4.4.1(a) below.

9 **4.4 Payment Procedures.**

10 **4.4.1 Funds Held In Trust**

11 (a) All payments owed to Held, pursuant to Sections 4.1 through
12 4.3, shall be delivered to the following payment address:

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

16 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
17 Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo
18 line "Prop 65 Penalties") at the following addresses:

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
1001 I Street
28 Sacramento, CA 95814

1 With a copy of the checks payable to OEHHA mailed to The Chanler
2 Group at the address set forth above in 4.4.1(a), as proof of payment to
3 OEHHA.

4 If for any reason this Consent Judgment is not entered by the Court within nine (9)
5 months of February 20, 2014, Plaintiff shall meet and confer with Shelby about mutually
6 agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps
7 cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid
8 and held in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon Shelby's written
9 request.

10 **4.4.2 Issuance of 1099 Forms**

11 After each penalty payment, Shelby shall issue separate 1099 forms for each payment to
12 Held, whose address and tax identification number shall be furnished upon request after this
13 Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in
14 Section 4.4.1 above.

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1** Held, acting on behalf of himself and in the public interest, hereby releases
17 Shelby, its parents, subsidiaries, affiliated entities that are under common ownership, directors,
18 officers, employees, attorneys, shareholders ("Defendant Releasees"), and any of its
19 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
20 licensors, licensees, and any other person or entity to whom they directly or indirectly distribute
21 or sell Covered Products ("Downstream Defendant Releasees"), from any alleged or actual
22 violation of Proposition 65 that has been asserted by Held in the public interest in his Notice
23 and Complaint regarding the alleged failure to warn about exposure to lead in Covered Products
24 sold or distributed by Shelby prior to the Effective Date. Shelby's compliance with this
25 Consent Judgment shall constitute compliance with Proposition 65 with respect to lead in
26 Covered Products.

1 **5.2** Held on behalf of himself, his past and current agents, representatives, attorneys,
2 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
3 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
4 including, without limitation, all actions, and causes of action, in law or in equity, suits,
5 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
6 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
7 fixed or contingent (collectively "Claims"), against Shelby, Defendant Releasees, and
8 Downstream Defendant Releasees arising from any violation of Proposition 65 regarding the
9 failure to warn about exposure to lead in Covered Products sold or distributed prior to the
10 Effective Date.

11 **5.3** Held also, in his individual capacity only and *not* in his representative capacity,
12 provides a general release herein which shall be effective as a full and final accord and
13 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
14 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, known
15 or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical listed
16 under Proposition 65 from use of the Covered Products manufactured prior to the Effective Date.
17 Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
18 provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
21 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
22 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
23 OR HER SETTLEMENT WITH THE DEBTOR.

24 Held, in his individual capacity only and *not* in his representative capacity, expressly waives and
25 relinquishes any and all rights and benefits which he may have under, or which may be conferred
26 on him by the provisions of Section 1542 of the California Civil Code as well as under any other
27 state or federal statute or common law principle of similar effect, to the fullest extent that he may
28 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
intention, the release hereby given shall be and remain in effect as a full and complete release

1 notwithstanding the discovery or existence of any such additional or different claims or facts
2 arising out of the released matters.

3 The Parties further understand and agree that this release shall not extend upstream to
4 any entities, other than Shelby, that manufactured the Covered Products or any component parts
5 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
6 thereof to Shelby.

7 **5.4** Shelby waives any and all Claims against Held, his attorneys, and other
8 representatives for any and all actions taken or statements made (or those that could have been
9 taken or made) by Held and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
11 matter, and/or with respect to the Covered Products.

12 **5.5** Shelby also provides a general release herein which shall be effective as a full and
13 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys' fees, damages, losses, claims, liabilities and demands of Shelby of any nature,
15 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter
16 of the Action. Shelby acknowledges that it is familiar with Section 1542 of the California Civil
17 Code, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
21 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
22 OR HER SETTLEMENT WITH THE DEBTOR.

23 Shelby expressly waives and relinquishes any and all rights and benefits which it may have
24 under, or which may be conferred on it by, the provisions of Section 1542 of the California Civil
25 Code, as well as under any other state or federal statute or common law principle of similar
26 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
27 released matters. In furtherance of such intention, the release hereby given shall be and remain
28 in effect as a full and complete release notwithstanding the discovery or existence of any such
additional or different claims or facts arising out of the released matters.

1 **6. COURT APPROVAL**

2 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
3 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
4 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

5 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
6 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
7 which Held shall file and which Shelby shall support as reasonably necessary.

8 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
9 and any and all prior agreements between the Parties merged herein shall terminate and become
10 null and void, and the action shall revert to the status that existed prior to the execution date of
11 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
12 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
13 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
14 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
15 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

16 **7. GOVERNING LAW**

17 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
18 California, and shall apply only to Covered Products offered for sale in the State of California.
19 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
20 law generally, or as to the Covered Products, then Shelby may provide written notice to Held of
21 any asserted change in the law, and shall have no further obligations pursuant to this Consent
22 Judgment with respect to, and to the extent that, the Covered Products are so affected.

23 **7.2** The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification by the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
27 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
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1 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
3 resolved against the drafting Party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

5 **8. NOTICES**

6 **8.1** Unless specified herein, all correspondence and notices required to be provided
7 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
8 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
9 Party by the other Party at the following addresses:

10 To Shelby:

11 Bruce Nye
12 Adams, Nye Becht LLP
13 222 Kearny Street, 7th Floor
14 San Francisco, CA 94108-4521

15 To Held:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

21 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
22 of address to which all notices and other communications shall be sent.

23 **9. MODIFICATION**

24 **9.1 Modification.** This Consent Judgment may be modified by written agreement of
25 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
26 Party and entry of a modified Consent Judgment by the court.

27 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
28 regulation is adopted that addresses the lead content of Covered Products sold in California
hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
in Section 3.1 of this Consent Judgment for good cause shown.

1 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
3 Party prior to filing a motion to modify the Consent Judgment.

4 **10. ENTIRE AGREEMENT**

5 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
6 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
8 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
9 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
10 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
11 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
12 waiver unless set forth in writing between the Parties.

13 **11. RETENTION OF JURISDICTION**

14 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
16 provision thereof, under C.C.P. §664.6.

17 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

18 **12.1** This Consent Judgment may be executed in counterparts and by facsimile or
19 portable document format (pdf), each of which shall be deemed an original, and all of which,
20 when taken together, shall constitute one and the same document.

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13. AUTHORIZATION

13.1 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:

Date: February 20, 2014

Date: _____

By: Anthony E. Held
Plaintiff Anthony E. Held, PhD., P.E.

By: _____
Defendant Shelby Group International, Inc.

1 **13. AUTHORIZATION**

2 **13.1** The undersigned are authorized to execute this Consent Judgment on behalf of
3 their respective Parties and have read, understood, and agree to all of the terms and conditions of
4 this Consent Judgment.

5
6 **AGREED TO:**

7 Date: _____

8
9 By: _____
10 Plaintiff Anthony E. Held, PhD., P.E.

AGREED TO:

 Date: 2/17/14 _____

 By:  _____
 Defendant Shelby Group International, Inc.
 CEO