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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 ANTHONY E. HELD, PH.D., P.E.,  
14 Plaintiff,  
15  
16 v.  
17 LITTLE EARTH PRODUCTIONS, INC.;  
RITE AID CORPORATION; *et al.*,  
18 Defendants.

Case No. CGC-18-568395  
**CONSENT JUDGMENT**  
(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.  
4 (“Held”) and defendant Little Earth Productions, Inc. (“Little Earth”), with Held and Little Earth  
5 each referred to individually as a “Party” and, collectively, as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to  
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer products.

10 **1.3 Defendant**

11 Little Earth 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 and  
13 Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Held alleges that Little Earth manufactures, imports, distributes, sells or offers for sale in  
16 California tote bags with handles containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so  
17 without providing the health hazard warning that Held alleges is required by Proposition 65. DEHP  
18 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth  
19 defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are tote bags with handles containing DEHP,  
22 including, but not limited to, the *NBA Golden State Warriors Burlap Market Tote, #751111-WARR,*  
23 *UPC #8 86699 66045 1* (hereinafter, “Products”) that are manufactured, imported, distributed, sold  
24 and/or offered for sale in California by Little Earth.

25 **1.6 Notice of Violation**

26 On December 13, 2017, Held served Little Earth and the requisite public enforcement  
27 agencies with a 60-Day Notice of Violation (the Notice), alleging that Little Earth violated  
28 Proposition 65 when it failed to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced  
2 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

### 3 **1.7 Complaint**

4 On July 25, 2018, Held commenced the instant action (Complaint), naming Little Earth as  
5 one of the defendants for the alleged violations of Proposition 65 that are the subject of the Notice.

### 6 **1.8 No Admission**

7 Little Earth denies the material, factual, and legal allegations contained in the Notice and  
8 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
9 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
10 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be  
11 construed as, an admission by Little Earth of any fact, finding, conclusion of law, issue of law, or  
12 violation of law. This section shall not, however, diminish or otherwise affect Little Earth's  
13 obligations, responsibilities, and duties under this Consent Judgment.

### 14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over Little Earth as to the allegations contained in the Complaint, that venue is proper in  
17 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions  
18 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

### 19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
21 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

## 22 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

### 23 **2.1 Commitment to Reformulate or Provide Warnings**

24 Commencing on the Effective Date and continuing thereafter, Little Earth shall only  
25 manufacture, purchase, import, sell or distribute for sale, in the State of California, Products that are  
26 either: (a) Reformulated Products, as defined by Section 2.2, below; or (b) Products that are labeled  
27 with a clear and reasonable warning as set forth under Sections 2.3 through 2.6.  
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1 in no case smaller than six-point type, subject to the additional requirements in Sections 2.5 and 2.6,  
2 as follows:

3  **WARNING:** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

4 **2.4 Product Warnings**

5 Little Earth shall affix one of the warnings detailed in Section 2.3, supra, to the Product label  
6 or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail  
7 order catalog and/or the internet to customers located in California. For the purpose of this  
8 agreement, “Product label” means a display of written, printed or graphic material that is printed on  
9 or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a  
10 type size of at least 6-point type and in no event smaller than the largest type size used for other  
11 consumer information on the product.

12 **2.5 Mail Order Catalog Warnings**

13 In the event that, after the Effective Date, Little Earth prints new catalogs and sells Products  
14 via mail order through such catalogs to customers located in California, Little Earth shall provide a  
15 warning for each Product, both on the Product label in accordance with Section 2.4, and in the  
16 catalog, according to this Section, in a manner that clearly associates the warning with the specific  
17 Product being purchased. Any warning provided in a mail order catalog shall be in the same type  
18 size or larger than other consumer information provided for the Product within the catalog and shall  
19 be provided on the same page and in the same location as the display and/or description of the  
20 Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b)  
21 if the warning provided on the Product label also uses the Short-Form Warning content.

22 **2.6 Internet Warnings**

23 If, after the Effective Date, Little Earth sells Products via the internet to customers located in  
24 California, Little Earth shall provide warnings for each Product both on the Product label, in  
25 accordance with Section 2.4, supra, and by prominently displaying the warning to the customer prior  
26 to completing the purchase or during the purchase of the Products without requiring customers to  
27 seek out the warning. Warnings given in conjunction with the sale of the Products via the internet  
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1 shall appear either: (i) on the same web page on which the Product is displayed; (ii) on the same  
2 web page as the order form for the Product; or (iii) on one or more web pages displayed to a  
3 purchaser during the checkout process. The warning shall appear in any of the above instances  
4 adjacent to or immediately following the display or description of the Product for which it is given in  
5 the same type size or larger than the Product description text. The internet warning may use the  
6 Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product  
7 label also uses the Short-Form Warning content.

8 Little Earth may also comply with this section by providing the warning using a clearly  
9 marked hyperlink that includes the word “**WARNING**” on the same web page and in the same  
10 location as the display and/or description of the Product, in type large enough so that the consumer  
11 does not have to search for it in the general content, and in a manner that clearly associates it with  
12 the Product to which the warning applies.

### 13 **3. MONETARY SETTLEMENT TERMS**

#### 14 **3.1 Civil Penalty Payments**

15 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to  
16 in the Notice, Complaint, and this Consent Judgment, Little Earth agrees to pay \$1,000 in civil  
17 penalties. Little Earth’s civil penalty payment will be allocated according to Health and Safety Code  
18 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California  
19 Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five  
20 percent (25%) of the penalty payment retained by Held. Little Earth shall issue its payment in two  
21 checks made payable to (a) “OEHHA” in the amount of \$750; and (b) “Anthony E. Held, Client  
22 Trust Account” in the amount of \$250. Held’s counsel shall be responsible for delivering OEHHA’s  
23 portion of the penalty payment.

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

25 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
26 reaching terms on their fees and costs. Shortly after the Parties finalized the other settlement terms,  
27 they then negotiated the compensation to be paid to Held and his counsel under general contract  
28 principles and the private attorney general doctrine, codified at California Code of Civil Procedure

1 § 1021.5, for all work performed through the mutual execution of this Consent Judgment and court  
2 approval of the same, but exclusive of fees and costs on appeal, if any. Little Earth agrees to pay  
3 \$19,000 by a check made payable to “The Chanler Group”, for all fees and costs incurred  
4 investigating, bringing this matter to Little Earth’s attention, litigating, and negotiating a settlement  
5 in the public interest.

6 **3.3 Payment Timing; Payments Held in Trust**

7 All payments due under this Consent Judgment shall be held in trust until the Court approves  
8 the Parties’ settlement. Little Earth shall deliver its civil penalty and attorneys’ fee reimbursement  
9 payments to its counsel, Ference & Associates LLC, within fifteen (15) days of the date that this  
10 Consent Judgment is fully executed by the Parties. Little Earth’s counsel shall provide Held’s  
11 counsel with written confirmation following its receipt of the settlement funds and shall continue to  
12 hold the settlement funds in trust, until the Court grants the motion for approval of this Consent  
13 Judgment, as contemplated by Section 5. Within five (5) days of the Effective Date, Little Earth’s  
14 counsel shall disburse the funds to Held’s counsel at the payment address listed in Section 3.4,  
15 below.

16 **3.4 Payment Address**

17 All payments required by this Consent Judgment shall be delivered to the following address:

18 The Chanler Group  
19 Attn: Proposition 65 Controller  
20 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Held’s Release of Proposition 65 Claims**

23 Held, acting on his own behalf and in the public interest, releases Little Earth and its parents,  
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
25 attorneys (Releasees) and each entity to whom Little Earth directly or indirectly distributes or sells  
26 the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
27 retailers (including, without limitation, Rite Aid Corporation), franchisers, cooperative members,  
28 licensors and licensees (Downstream Releasees) for any violations arising under Proposition 65 for

1 unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by  
2 Little Earth prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this  
3 Consent Judgment constitutes compliance with Proposition 65 by Little Earth with respect to the  
4 alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or  
5 distributed for sale by Little Earth after the Effective Date.

6 **4.2 Held's Individual Release of Claims**

7 Held, in his individual capacity only and *not* in his representative capacity, also provides a  
8 release to Little Earth, Releasees, and Downstream Releasees which shall be effective as a full and  
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
10 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or  
11 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
12 exposures to DEHP in Products manufactured, imported, distributed or sold by Little Earth prior to  
13 the Effective Date. Nothing in this Section shall affect Held's right to commence or prosecute an  
14 action under Proposition 65 against a Releasee or Downstream Releasee that does not involve Little  
15 Earth's Products.

16 **4.3 Little Earth's Release of Held**

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

23 **5. COURT APPROVAL**

24 This Consent Judgment shall be null and void if, for any reason, it is not approved and  
25 entered by the Court within one year after it has been fully executed by all Parties. Held and Little  
26 Earth agree to support the entry of this agreement as a judgment, and to obtain the Court's approval  
27 of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health  
28 and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval of this Consent



1 Judgment, which motion Held shall draft and file. In furtherance of obtaining such approval, the  
2 Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of  
3 this agreement as a judgment, and to obtain judicial approval of their settlement in a timely manner.  
4 For purposes of this section, "best efforts" shall include, at a minimum, supporting the motion for  
5 approval, responding to any objection that any third-party may file or lodge, and appearing at the  
6 hearing before the Court if so requested.

7 **6. SEVERABILITY**

8 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
9 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
10 remaining provisions shall not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California  
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
14 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Little Earth  
15 may provide Held with written notice of any asserted change in the law, and shall have no further  
16 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Little  
18 Earth from its obligation to comply with any pertinent state or federal law or regulation.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment  
21 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
22 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
23 following addresses:

24 To Little Earth:  
25 Rob Brandegee, Secretary and  
26 Treasurer  
27 Little Earth Productions, Inc.  
2400 Josephine Street  
Pittsburgh, PA 15203

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

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1           With a Copy To:

2           Stanley Ference, Esq.  
3           Ference & Associates LLC  
4           409 Broad Street  
5           Pittsburgh, PA 15143

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

8           **9.    COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

12          **10.   COMPLIANCE WITH REPORTING REQUIREMENTS**

13          Held and his counsel agree to comply with the reporting form requirements referenced in  
14          California Health and Safety Code § 25249.7(f).

15          **11.   ENTIRE AGREEMENT**

16          This Consent Judgment contains the sole and entire agreement and understanding of the  
17          Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
18          negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
19          therein. There are no warranties, representations, or other agreements between the Parties except as  
20          expressly set forth herein. No representations, oral or otherwise, express or implied, other than those  
21          specifically referred to in this Consent Judgment have been made by any Party hereto. No other  
22          agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to  
23          exist or to bind any of the Parties hereto.

24          **12.   MODIFICATION**

25          This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
26          the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
27          any party and the entry of a modified Consent Judgment by the Court thereon.  
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1 **13. AUTHORIZATION**

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

5  
6 **AGREED TO:**

**AGREED TO:**

7 Date: 12/18/2018

8 Date: 12.17.18

9 By:   
10 ANTHONY E. HELD, PH.D., P.E.

11 By:   
12 Rob Brandege, Secretary and Treasurer  
13 LITTLE EARTH PRODUCTIONS, INC.

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