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Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

FILED

FEB 22 2010

ALEX CALVO, CLERK
BY STEPHEN CARLTON
DEPUTY, SANTA CRUZ COUNTY

FILED BY FACSIMILE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

THE NORTHWEST COMPANY; and DOES
1 through 150, inclusive,

Defendants.

Case No. CV 162711

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT

Date: February 22, 2010
Time: 8:30 A.M.
Dept.: 5
Judge: Hon. Jeffrey Almquist

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant THE NORTHWEST COMPANY, having agreed through their respective counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the parties, and after issuing an order approving this Proposition 65 settlement agreement and entering the Consent Judgment executed on November 22, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.6, judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**.

IT IS SO ORDERED.

Dated: FEB 22 2010

JEFF ALMQUIST
JUDGE OF THE SUPERIOR COURT

Exhibit 1

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Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ
UNLIMITED CIVIL JURISDICTION

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

v.

THE NORTHWEST COMPANY; and DOES
1 through 150, inclusive,
Defendant.

Case No. CV 162711

**STIPULATION AND [PROPOSED] ORDER
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Northwest and Gallery, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Held") and The Northwest Company (hereinafter "Northwest"), with Held and
5 Northwest collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Northwest employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Northwest has manufactured, distributed, and/or sold in the State of
15 California children's vinyl pillows containing di(2-ethylhexyl)phthalate (commonly referred to as
16 "DEHP"). DEHP is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of
17 1986, California Health & Safety Code §§25249.5 *et seq.* ("Proposition 65"), as a chemical
18 known to the State of California to cause birth defects and other reproductive harm. DEHP is
19 referred to herein as the "Listed Chemical."

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as children's vinyl
22 pillows containing di(2-ethylhexyl)phthalate including, but not limited to, *Nascar Jeff Gordon*
23 *Pillow, NW14052306 (#0 87918 81425 7)*. All such products containing DEHP are referred to
24 hereinafter as the "Products".

25 **1.6 Notice of Violation**

26 On November 7, 2008, Held served Northwest and various public enforcement agencies
27 with a "60-Day Notice of Violation" (the "Notice") that provided Northwest with notice of
28

1 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the
2 Products that Northwest sold exposed users in California to the Listed Chemical.

3 **1.7 Complaint**

4 On February 5, 2009, Held, who was and is acting in the interest of the general public in
5 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
6 County of Santa Cruz against Northwest, and Does 1 through 150, alleging violations of Health
7 & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl
8 pillows manufactured distributed and/or sold by Northwest.

9 **1.8 No Admission**

10 Northwest denies the material factual and legal allegations contained in Held’s Notice and
11 maintains that all products that it has sold and distributed in California, including the Products,
12 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
13 construed as an admission by Northwest of any fact, finding, issue of law, or violation of law, nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by
15 Northwest of any fact, finding, conclusion, issue of law or violation of law, such being
16 specifically denied by Northwest. However, this section shall not diminish or otherwise affect
17 the obligations, responsibilities and duties of Northwest under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the parties stipulate that this Court has
20 jurisdiction over Northwest as to the allegations contained in the Complaint, that venue is proper
21 in the County of Santa Cruz and that this Court has jurisdiction to enter and enforce the
22 provisions of this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean October 1,
25 2009.

26 **2. INJUNCTIVE RELIEF: REFORMULATION**

27 **2.1 Reformulation Commitments and Schedule**

28

1 Except as otherwise provided for in this Agreement, as of the Effective Date, Northwest
2 shall only manufacture and/or distribute Products for sale in California that are Phthalate Free, as
3 set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean
4 Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP when
5 analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A
6 and 8270C, or equivalent methods as may be allowed by any state or federal agency.

7 **3. MONETARY PAYMENTS**

8 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

9 In settlement of all the claims referred to in this Consent Judgment against it, Northwest
10 shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health &
11 Safety Code §25192, with 75% of these funds remitted to the State of California's Office of
12 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held
13 as provided by California Health & Safety Code §25249.12(d). Northwest shall issue two
14 separate checks for the penalty payment: (a) one check made payable to Chanler Law Group in
15 Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA)
16 in the amount of \$1,500, representing 75% of the total penalty, and (b) one check to Chanler Law
17 Group in Trust for Held in the amount of \$500, representing 25% of the total penalty. Two
18 separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento,
19 CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be
20 furnished, upon request, five calendar days before payment is due. The payments shall be
21 delivered on or before December 1, 2009, at the following address:

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

27 **4. REIMBURSEMENT OF FEES AND COSTS**

28 **4.1 Attorney Fees and Costs**

The Parties acknowledge that Held and his counsel offered to resolve this dispute without

1 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
2 issue to be resolved after the material terms of the agreement had been settled. After the other
3 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
4 compensation due to Held and his counsel under general contract principles and the private
5 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
6 work performed through the mutual execution of this agreement. Northwest shall reimburse Held
7 and his counsel for fees and costs incurred as a result of investigating, bringing this matter to
8 Northwest's attention, and litigating and negotiating a settlement in the public interest.
9 Northwest shall pay Held and his counsel \$15,000 for fees and costs incurred as a result of
10 investigating, bringing this matter to Northwest's attention, and litigating and negotiating a
11 settlement in the public interest. Northwest shall issue a separate 1099 for fees and costs (EIN:
12 20-3929984) and shall make the check payable to "Chanler Law Group" and shall be delivered on
13 or before December 1, 2009, to the following:

14 Chanler Law Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Release of Northwest and Downstream Customers**

21 In further consideration of the promises and agreements herein contained, and for the
22 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
23 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
24 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
25 form of legal action and releases all claims, including, without limitation, all actions, and causes
26 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
27 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
28 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
(collectively "Claims"), that were brought or could have been brought against Northwest and its

1 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
2 shareholders, agents, employees, and sister and parent entities and each of Northwest downstream
3 distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
4 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and
5 their respective officers, directors, attorneys, representatives, shareholders, agents, employees and
6 sister and parent entities (collectively "Releasees") that arise under Proposition 65 or any other
7 statutory or common law Claims that could have been asserted including such Claims as relate to
8 Northwest and each of its Releasees alleged failure to warn about exposures to or identification of
9 the Listed Chemical contained in the Products.

10 **5.2 Northwest Release of Held**

11 Northwest waives any and all claims against Held, his attorneys and other representatives,
12 for any and all actions taken or statements made (or those that could have been taken or made) by
13 Held and his attorneys and other representatives, whether in the course of investigating claims or
14 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to
15 the Products.

16 **6. 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
19 year after it has been fully executed by all parties, in which event any monies that have been
20 provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded
21 within fifteen (15) days after receiving written notice from Northwest that the one-year period
22 has expired.

23 **7. SEVERABILITY**

24 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
26 provisions remaining shall not be adversely affected.
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8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of state or federal law generally, or as to the Products, then Northwest shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this consent judgment with respect to, and to the extent that, the Products are so affected.

9. NOTICES

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

To Northwest:

Bruce Nye
Adams Nye Trapani Becht LLP
222 Kearny Street, Seventh Floor
San Francisco, CA 94108

To Held:

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

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

10. COUNTERPARTS, FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same documents.

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11. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Held, Northwest and their respective counsel 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. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers, asserting any oral argument in support of the required motion for judicial approval, and defending any appellate review of the Court's approval.

13. **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.

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14. 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:

Date: 11/19/2009 _____

Date: _____

By: *Anthony E. Held*
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: _____
Defendant, THE NORTHWEST COMPANY

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14. 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:
Date: _____

AGREED TO:
Date: Nov 22, 2009

By: _____
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: 
Defendant, THE NORTHWEST COMPANY