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ENDORSED
FILED
Superior Court of California
County of San Francisco
DEC 22 2016
CLERK OF THE COURT
By: ROSIE NOGUERA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

PASCO SPECIALTY & MFG., INC., *et al.*,

Defendants.

Case No. CGC16-550193

~~[PROPOSED]~~ JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AS TO DEFENDANT PASCO SPECIALTY & MFG., INC.

Date: December 22, 2016
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Harold E. Kahn

Reservation No.: 11021222-11

Plaintiff Anthony E. Held, Ph.D., P.E. and Defendant Pasco Specialty & Mfg., Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated settlement, and following this Court's issuance of an order approving their Proposition 65 settlement, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Settlement Agreement attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 12/22/16

JUDGE OF THE SUPERIOR COURT
RICHARD ULMER

EXHIBIT 1

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Attorneys for Plaintiff
ANTHONY E. HELD, PH.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., Plaintiff, v. PASCO SPECIALTY & MFG., INC.; et al., Defendant.	Case No. CGC16-550193 **STIPULATED SETTLEMENT AGREEMENT PURSUANT TO SECTION 664.6 C.C.P.** (Health & Safety Code § 25249.6 *et seq.* and Code Civ. Proc. § 664.6)

1. INTRODUCTION

1.1 Parties

This Stipulated Settlement Agreement pursuant to Section 664.6 C.C.P. (the "Settlement Agreement") is entered into by and between Anthony E. Held ("Held") and Pasco Specialty & Mfg, Inc. ("Pasco"), with Held and Pasco each individually referred to as a "Party" and collectively as the "Parties." Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Pasco employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations

Held alleges that Pasco manufactures, sells, and/or distributes for sale in California, tools with vinyl/PVC grips containing the phthalate chemical Diisononyl phthalate ("DINP"). DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Held alleges Pasco failed to provide the health hazard warning required by Proposition 65 for consumer exposures to DINP from its tools with vinyl/PVC grips.

1.3 Product Description

The products covered by this Consent Judgment are tools with vinyl/PVC grips containing DINP, including, but not limited to, the *Pasco Quick Set Drain Wrench, #7099, UPC #6 71451 70990 5* (collectively, "Products").

1.4 Notice of Violation

On August 10, 2015, Held served Pasco and the requisite public enforcement agencies with a 60-Day Notice of Violation (the "Notice"), alleging that Pasco violated Proposition 65 when it failed to warn consumers in California of the health hazards associated with exposures to DINP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the alleged violations that are the subject of the Notice.

1.5 Complaint

On or about February 1, 2016, Held commenced the instant action ("Complaint"), setting forth Pasco as a defendant for the alleged violations that are the subject of the Notice.

1.6 Jurisdiction

For purposes of this Settlement Agreement only, the Parties stipulate that this Court has jurisdiction over Pasco and Anthony E. Held as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that the Court has jurisdiction to enforce the provisions of this Settlement Agreement pursuant to Code of Civil Procedure section 664.6 as to the alleged violations of Proposition 65, as set forth in the Notice and Complaint.

1.5 No Admission

Pasco denies the material, factual, and legal allegations contained in the 60-Day Notice and in the Complaint, and maintains that all of the products that Pasco has imported, manufactured, distributed, wholesaled, or retailed for sale in California, including the Products, have been and are in compliance with all laws, including but not limited to Proposition 65. Nothing herein shall be construed as an admission by Pasco of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Pasco of any fact, finding, conclusion, issue of law, or violation of law.

Except as expressly set forth herein, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, complaint, or defense the Parties may have in any other or future legal proceeding unrelated to this specific proceeding.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is entered as a judgment by the Court, and Plaintiff provides a file endorsed copy to Pasco.

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2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS

Commencing on the effective date, and continuing thereafter, Pasco agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" shall mean products containing less than or equal to 1,000 parts per million (0.1%) DINP when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Pasco agrees to pay $16,900 in civil penalties. The penalty payments will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Held.

3.1.1 Initial Civil Penalty

Pasco shall deliver a civil penalty payment of $2,900, in two checks for the following amounts made payable to (a) "OEHHA" in the amount of $2,175; and (b) "Anthony E. Held, Client Trust Account" in the amount of $725." Held will provide 75% of the payment to OEHHA in accordance with Health and Safety Code section 25249.12(c)(1) and (d).

3.1.2 Final Civil Penalty – Accelerated Reformulation

On or before October 31, 2016, Pasco shall make a final civil penalty payment of $14,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than October 25, 2016, an officer of Pasco provides Held with written certification that all of the Products purchased for sale or manufactured for sale in California as of the date of such certification are Reformulated Products as defined by Section 2.1, and that Pasco will continue to offer only Reformulated Products in California in the future. The option to certify to accelerated reformulation in lieu of

making the final civil penalty payment required by this Section is a material term and time is of the essence.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, the Parties negotiated a resolution of the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, Pasco shall reimburse Held and his counsel $23,000. Pasco's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Held investigating, bringing this matter to Pasco's attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Timing; Payments Held in Trust

With the exception of the final civil penalty payment required by Section 3.1.2, Pasco shall deliver all payments required by this Consent Judgment to its counsel within one week of the date that this agreement is fully executed by the Parties. Pasco's counsel shall confirm receipt of settlement funds in writing to Held's counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the motion for approval of the Parties' settlement contemplated by Section 5. Within two days of the Effective Date, Pasco's counsel shall deliver all settlement payments it has held in trust to Held's counsel at the address provided in Section 3.4. In the event the final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective Date, then Pasco shall deliver the final civil penalty payment to its attorney to be held in trust until, and disbursed within two days after, the Effective Date.

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3.4 Payment Address

All payments under this Settlement Agreement shall be delivered to:

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

4. CLAIMS COVERED AND RELEASED

4.1 Held's Public Release of Proposition 65 Claims

Held, acting on his own behalf and in the public interest, releases Pasco and its parents, subsidiaries, predecessors, affiliated entities, directors, officers, employees, contractors, agents, and attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the Products, including but not limited to its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors, and licensees, ("Downstream Releasees") for violations arising under Proposition 65 for unwarned exposures to DINP from the Products sold by Pasco prior to the Effective Date, as set forth in the Notice.

4.2 Held's Individual Release of Claims

Held, in his individual capacity only and not in his representative capacity, also provides a release to Pasco, Releasees, and Downstream Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DINP and other phthalates from the Products sold or distributed for sale by Pasco before the Effective Date.

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4.3 Pasco Release of Held

Pasco, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements made by Held and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.4 Mutual Waiver of California Civil Code Section 1542

The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which provides as follows:

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

The Parties, each on his/its own behalf, and on behalf of his/its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3, above.

5. COURT APPROVAL

This Settlement Agreement is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by the Parties.

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6. **SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. Compliance with the terms of this Settlement constitutes compliance with the requirements of Proposition 65 with respect to alleged exposures to DINP arising from the Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pasco may provide written notice to Held of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

8. **NOTICE**

Unless specified otherwise in this Settlement Agreement, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Held:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Ph: (510) 848-8880
Fax: (510) 848-8118
Email: ctuttle@chanler.com

For Pasco:

Michael J. Hite, President
Pasco Specialty & Mfg. Inc.
P.O. Box 1747
Lynwood, CA 90262

With a copy by facsimile and email to:

Thomas H. Clarke, Jr.
Attn: Roxana Riedell
Ropers, Majesky, Kohn, & Bentley, PC
1001 Marshall Street, Suite 500
Redwood City 94063-2052
Ph: 650-364-8200
Fax: 650-780-1701
Email: thomas.clarke@rmkb.com

For all notices and correspondence required to be provided in writing pursuant to this Settlement Agreement, the Parties shall also send a courtesy notice by electronic mail and/or facsimile to counsel with the correspondence or notice attached thereto. The provision of such courtesy notice shall not lessen, diminish, or void the requirement noted herein regarding how actual notices and correspondence are to be sent. Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Held and Pasco agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this

Section, "best efforts" shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and supporting the motion for judicial approval.

12. MODIFICATION

This Settlement Agreement may be modified only by signed written agreement of the Parties.

13. AUTHORIZATION

13.1 Each of the Parties acknowledges that they had the right and ability to consult with and seek the advice of counsel of their choice and each voluntarily has entered into this Settlement.

13.2 The undersigned affirmatively represent that they are authorized to execute this Settlement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document, and further certifies that he or she is fully authorized by the Party he or she represents to execute the Settlement Agreement on behalf of the Party represented and legally bind that Party.

13.3 Except to the extent otherwise noted, each of the Parties shall bear its own costs and fees.

14. DRAFTING

The terms of this Settlement Agreement have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Settlement Agreement, no inference, assumption, or presumption shall be drawn, and no provision of this Settlement Agreement shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Settlement Agreement. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Settlement Agreement.

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15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT

15.1 If a dispute arises with respect to either Party's compliance with the terms of this Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in an amicable manner prior to filing of any motion related to the terms and conditions of the Settlement Agreement, for a period of at least thirty (30) days.

15.2 For purposes of this Settlement Agreement only, the Parties stipulate that in the event that enforcement of this Settlement Agreement is deemed necessary by one or both of the Parties, or a dispute between the Parties arises regarding this Settlement Agreement, the Superior Court of California, County of Marin, has proper jurisdiction and venue over the Parties as to the terms and conditions of this Settlement Agreement, that venue is proper in the County of Marin, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Settlement Agreement.

AGREED TO:

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

Dated: 10/12/2016

AGREED TO:

PASCO SPECIALTY & MFG., INC.

By: Michael J. Pite

Its: President

Dated: 10-17-16