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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E.,
15 Plaintiff,

16 v.

17 SPECTRUM BRANDS HOLDINGS, INC.;
18 SPECTRUM BRANDS, INC.; UNITED
19 INDUSTRIES CORPORATION; UNITED PET
20 GROUP, INC.; and DOES 1-150, inclusive,
21 Defendants.

Case No. HG13702000

[PROPOSED] CONSENT JUDGMENT

Action Filed: March 18, 2013

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and United Pet Group, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Held” or “Plaintiff”) and defendant United Pet Group, Inc. (“United Pet” or “Defendant”),
5 with Plaintiff and Defendant collectively referred to as the “parties.”

6 **1.2 Anthony E. Held, Ph.D., P.E.**

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

10 **1.3 United Pet Group, Inc.**

11 Held alleges that United Pet employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that United Pet has manufactured, imported, distributed and/or sold in the State
16 of California pond nets with vinyl/PVC handle grips containing di(2-ethylhexyl)phthalate
17 (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as pond nets with
21 vinyl/PVC hand grips containing DEHP, including but not limited to, *Tetra Pond Telescoping Pond*
22 *Net, #16504-900, UPC #0 46798 16504 0*, which are manufactured, imported, distributed, sold
23 and/or offered for sale by United Pet in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On August 16, 2013, Held served United Pet, Spectrum Brands Holdings, Inc., Spectrum
26 Brands, Inc., United Industries Corporation and various public enforcement agencies with a
27 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice
28 that United Pet, Spectrum Brands Holdings, Inc., Spectrum Brands, Inc., United Industries

1 Corporation were in violation of California Health & Safety Code § 25249.6 for failing to warn
2 consumers that their pond nets with vinyl/PVC handle grips exposed users in California to DEHP.

3 **1.7 Complaint**

4 On November 5, 2013, Held filed a complaint in the Superior Court in and for the County of
5 Alameda against United Pet, Spectrum Brands Holdings, Inc., Spectrum Brands, Inc., United
6 Industries Corporation, and Does 1 through 150, titled *Held v. Spectrum Brands Holdings, Inc., et*
7 *al.*, Case No. HG13702000 (the “Action”), alleging violations of California Health & Safety Code
8 § 25249.6, based on the alleged exposures to DEHP contained in certain pond nets with vinyl/PVC
9 handle grips sold by United Pet, Spectrum Brands Holdings, Inc., Spectrum Brands, Inc., and
10 United Industries Corporation in the State of California.

11 **1.8 No Admission**

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

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has
22 jurisdiction over United Pet as to the allegations contained in the Complaint, that venue is proper in
23 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
24 this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean May 15, 2014.
27
28

1 **1.11 Request for Dismissal**

2 Counsel for United Pet has notified counsel for Held that Spectrum Brands Holdings, Inc.,
3 Spectrum Brands, Inc. and United Industries Corporation are not proper parties to the Complaint
4 based upon the allegations made therein, and Held has agreed to dismiss the entire action against
5 these entities without prejudice. To this end, counsel for Held will cause to be filed in the above-
6 referenced court a request for dismissal of the entire action without prejudice as to Spectrum Brands
7 Holdings, Inc., Spectrum Brands, Inc. and United Industries Corporation ten (10) days of execution
8 by the parties of this [Proposed] Consent Judgment.

9 **2. INJUNCTIVE RELIEF: REFORMULATION**

10 **2.1 Reformulation Standards**

11 “Reformulated Products” are defined as those Products containing DEHP in concentrations
12 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
13 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by
14 federal or state government agencies for the purpose of determining DEHP content in a solid
15 substance.

16 **2.2 Reformulation Commitment**

17 As of the Effective Date, all Products manufactured for sale and/or purchased for sale in the
18 State of California by or on behalf of United Pet shall be Products that qualify as Reformulated
19 Products as defined in Section 2.1 above. At the request of Held, United Pet shall provide written
20 certification by an officer, director, employee or agent of United Pet of compliance with this
21 section.

22 **3. MONETARY PAYMENTS**

23 **3.1 Civil Penalty Payments**

24 In settlement of all the claims referred to in this Consent Judgment, United Pet has been
25 assessed a total of \$9,000 in civil penalties in accordance with this Section. Each penalty payment
26 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with
27 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
28 (“OEHHHA”) and the remaining 25% of the penalty remitted to Held. Each penalty payment shall be

1 made within two business days of the date it is due and be delivered to the addresses listed in
2 Section 3.3 below. United Pet shall be liable for payment of interest, at a rate of 10% simple
3 interest, for all amounts due and owing under this Section and Section 4 that are not received within
4 two business days of the due date.

5 **3.1.1 Initial Civil Penalty**

6 Within ten days of execution by the parties of this [Proposed] Consent Judgment,
7 United Pet shall issue a check for its initial civil penalty in the amount of \$3,000 to “Barnes &
8 Thornburg LLP”. Barnes & Thornburg LLP shall provide The Chanler Group with written
9 confirmation within five days of receipt that the funds have been deposited in a trust account.
10 Within two days of the date that this Consent Judgment is approved by the Court, Barnes &
11 Thornburg LLP shall issue two separate checks for the initial civil penalty payment to: (a)
12 “OEHHA” in the amount of \$2,250.00; and (b) “Dr. Anthony Held, Client Trust Account” in the
13 amount of \$750.00.

14 **3.1.2 Final Civil Penalty**

15 United Pet has been assessed a final civil penalty of \$6,000, based on its alleged
16 violations of Proposition 65, as specific in the Notice. The Parties acknowledge, however, that
17 United Pet has furnished Plaintiff’s counsel with a certification from an officer, director, employee
18 or agent of United Pet certifying that as of the date of the certification and continuing into the future
19 all Products manufactured for sale and/or purchased for sale in the State of California by or on
20 behalf of United Pet are Reformulated Products. As a result of United Pet providing said
21 certification, the final civil penalty of \$6,000 shall be waived in its entirety.

22 **3.2 Reimbursement of Fees and Costs**

23 The parties acknowledge that Held and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
25 issue to be resolved after the material terms of the agreement had been settled. Held then
26 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
27 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held
28 and his counsel under general contract principles and the private attorney general doctrine codified

1 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
2 execution of this agreement. United Pet, within ten days of execution of this Consent Judgment,
3 shall issue a check payable to “Barnes & Thornburg LLP” in the amount of \$25,000.00 to be held
4 in trust by Barnes & Thornburg for The Chanler Group. Barnes & Thornburg LLP shall provide
5 The Chanler Group with written confirmation within five days of receipt that the funds have been
6 deposited in a trust account. Within two business days of the date this Consent Judgment is
7 approved by the Court, Barnes & Thornburg LLP shall issue a check payable to “The Chanler
8 Group” in the amount of \$25,000 to the address listed in Section 3.3.1(a), below.

9 **3.3 Payment Procedures**

10 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 11 (a) All payments owed to Held and his counsel, pursuant to Sections 3.1
12 through 3.2, shall be delivered to the following payment address:

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

- 18 (b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2,
19 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
20 at the following addresses:

21 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
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 3.3.1(a), as proof of payment to
3 OEHHA.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 Held's Public Release of Proposition 65 Claims**

6 Held, acting on his own behalf and in the public interest, releases United Pet and its parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
8 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
9 Products including, but not limited to, their downstream distributors, wholesalers, customers,
10 retailers, franchisers, cooperative members, licensors and licensees and their respective affiliates
11 and subsidiaries, if any ("Downstream Releasees"), for any claims or violations arising under
12 Proposition 65 for, alleged unwarned exposures to DEHP from the Products sold by United Pet
13 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent
14 Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP from the
15 Products.

16 **4.2 Held's Individual Release of Claims**

17 Held, in his individual capacity only and *not* in his representative capacity, also provides a
18 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
19 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
20 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
21 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
22 exposures to DEHP in the Products sold or distributed for sale by United Pet prior to the Effective
23 Date.

24 Held acknowledges that he is familiar with California Civil Code section 1542, which
25 provides as follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
27 **WHICH THE CREDITOR DOES NOT KNOW OR**
28 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**

1 **TIME OF EXECUTING THE RELEASE, WHICH IF**
2 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
3 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
4 **DEBTOR.**

5 Held, for his part and on behalf of his past and current agents, representatives, employees, officers,
6 directors, attorneys, successors, and/or assignees, if any, expressly waives and relinquishes any and
7 all rights and benefits which he/it/they may have under, or which may be conferred on him/it/them
8 by the provisions of California Civil Code section 1542, as well as under any other state or federal
9 statute or common law principle of similar effect, to the fullest extent that it may lawfully waive
10 such rights or benefits pertaining to the released matters.

11 **4.3 United Pet's Release of Held**

12 United Pet on behalf of itself, its past and current agents, representatives, attorneys,
13 successors and/or assignees, hereby waives any and all claims against Held, his attorneys and other
14 representatives, for any and all actions taken or statements made (or those that could have been
15 taken or made) by Held and his attorneys and other representatives, whether in the course of
16 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
17 respect to the Products.

18 **5. 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 one year
21 after it has been fully executed by all parties, in which event any monies that have been provided to
22 Held or his counsel pursuant to Sections 3.1 or 3.2 shall be refunded within fifteen (15) days after
23 receiving written notice from United Pet that the one-year period has expired and the Consent
24 Judgment has not been approved and entered by the Court.

25 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
4 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
5 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
6 preemption or rendered inapplicable by reason of law generally as to the Products, then United Pet
7 shall provide written notice to Held of any asserted change in the law, and shall have no further
8 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
9 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve United Pet from
10 any obligation to comply with any pertinent state or federal toxics control law.

11 **8. NOTICES**

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

16 To United Pet Group, Inc:	To Anthony E. Held, Ph.D., P.E.:
17 c/o Levi W. Heath	Proposition 65 Coordinator
18 Barnes & Thornburg LLP	The Chanler Group
19 2029 Century Park East, Suite 300	2560 Ninth Street
Los Angeles, CA 90067	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

22 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

23 This Consent Judgment may be executed in counterparts and by facsimile or PDF signature,
24 each of which shall be deemed an original, and all of which, when taken together, shall constitute
25 one and the same document. A facsimile or PDF signature shall be as valid as the original.

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

27 Held and his attorneys agree to comply with the reporting form requirements referenced in
28

1 California Health & Safety Code § 25249.7(f).

2 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

3 Held and United Pet agree to mutually employ their best efforts to support the entry of this
4 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
5 timely manner. 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, which
7 Held shall draft and file, and United Pet shall join. If any third party objection to the noticed motion
8 is filed, Held and United Pet shall work together to file a joint reply and appear at any hearing
9 before the Court. This provision is a material component of the Consent Judgment and shall be
10 treated as such in the event of a breach.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified only: (1) by written agreement of the parties and
13 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
14 of any party and entry of a modified Consent Judgment by the Court.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment on behalf of their
17 respective parties and have read, understood and agree to all of the terms and conditions of this
18 Consent Judgment.

19
20 AGREED TO:

AGREED TO:

21
22 Date: May 21, 2014

Date: May 20, 2014

23
24 By: Anthony E. Held
Anthony E. Held, Ph.D., P.E.

By: Joseph C. Carney
Name: Joseph C. Carney
Title: DUP R&D/Technical Services
United Pet Group, Inc.