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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

20 ANTHONY E. HELD, PhD., P.E.,

21 Plaintiff,

22 v.

23 PACIFIC TRADE INTERNATIONAL,
24 INC.; TARGET CORPORATION; and
25 DOES 1 -20, inclusive,

26 Defendants.

Case No. CGC-14-538674

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

27 **1. INTRODUCTION**

28 **1.1 Parties**

This Consent Judgment is entered into by and between plaintiff, Anthony E. Held (“Held”) and defendant Pacific Trade International, Inc. (“Pacific”), with Held and Pacific each individually referred to as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances

1 contained in consumer products.

2 **1.3 Defendants**

3 Pacific and Target Corporation (“Target”) (Pacific and Target are collectively the
4 “Defendants”) each employ ten or more persons and each is a “person in the course of doing
5 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
6 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

7 **1.4 General Allegations**

8 Held alleges that Defendants sold reed diffusers and glass candle holders with exterior
9 designs containing lead without first providing the exposure warning required by Proposition 65.
10 Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
11 birth defects or other reproductive harm.

12 **1.5 Product Description**

13 The products that are covered by this Consent Judgment are: 1) reed diffusers containing
14 lead that are imported, manufactured, sold, or distributed for sale by Pacific and/or Target in
15 California including, but not limited to, Pure and Natural Lemongrass Eucalyptus Reed Diffuser,
16 #054 09 1965, UPC #7 54870 52452 3, and Pure and Natural Fig & Redwood Reed Diffuser,
17 #054 09 0770, UPC #7 54870 79179 6 (the “Initial Noticed Products”); and 2) glass candle
18 holders with exterior designs containing lead that are imported, manufactured, sold, or
19 distributed for sale by Pacific and/or Target in California including, but not limited to, Pure
20 Natural Chesapeake Bay Candle Lemongrass Eucalyptus, Item/Model No. 054 09 1239; B13063,
21 UPC 7 54870 75577 4, and Pure Natural Chesapeake Bay Candle Salt Water Orchid, Item/Model
22 No. B13238; 054 09 1238, UPC 7 54870 75579 8. The products described in clause 2 in the
23 immediately preceding sentence are collectively referred to as the “Subsequent Noticed
24 Products,” and together with the Initial Noticed Products are collectively referred to as the
25 “Products.”

26 **1.6 Notice of Violation**

27 On or about October 25, 2013, Held served Pacific, Target and certain requisite public
28 enforcement agencies with a 60-Day Notice of Violation (the “Notice”) alleging that Defendants

1 were in violation of Proposition 65 for failing to warn their customers and consumers in
2 California that the Initial Noticed Products expose users to lead. On or about November 25,
3 2014, Held served Pacific, Target and certain requisite public enforcement agencies with a
4 Supplemental 60-Day Notice of Violation (the “Supplemental Notice,” collectively with the
5 Notice, the “Notices”) alleging that Defendants were in violation of Proposition 65 for failing to
6 warn their customers and consumers in California that the Subsequent Noticed Products expose
7 users to lead.

8 **1.7 Complaint**

9 On April 15, 2014, Held filed the instant action (as amended by the First Amended
10 Complaint filed May 22, 2014, the “Complaint”), which Complaint names Pacific and Target as
11 defendants for the alleged violations of Health and Safety Code section 25249.6 that are the
12 subject of the Notice. Following the expiration of the sixty-day notice period following
13 Plaintiff’s service of the Supplemental Notice, and upon entry of this Consent Judgment, the
14 Complaint shall be deemed amended *nunc pro tunc* to include all Products sold, manufactured or
15 distributed by Pacific and/or Target in California and the violations alleged in the Supplemental
16 Notice, provided that, as of the expiration of the sixty-day notice period following Plaintiff’s
17 service of the Supplemental Notice, no public enforcer has diligently prosecuted any of the
18 allegations set forth in the Supplemental Notice.

19 **1.8 No Admission**

20 Defendants deny the material, factual, and legal allegations contained in the Notice, the
21 Supplemental Notice, and the Complaint, and maintain that all of their products sold and
22 distributed for sale in California, including the Products, have been, and are, in compliance with
23 all applicable laws. Nothing in this Consent Judgment shall be construed as an admission of any
24 fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
25 Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of
26 law, issue of law, or violation of law. This Section 1.8 shall not, however, diminish or otherwise
27 affect Pacific’s obligations, responsibilities, and duties under this Consent Judgment.

28 **1.9 Jurisdiction**

1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
2 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in San
3 Francisco County, and that this Court has jurisdiction to enter and enforce the provisions of this
4 Consent Judgment.

5 **1.10 Effective Date**

6 For purposes of this Consent Judgment, the term “Effective Date” means the date on
7 which this Consent Judgment is approved by the Court.

8 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

9 **2.1 Reformulated Products**

10 Commencing on December 15, 2014, and continuing thereafter, Pacific shall only
11 purchase for sale, manufacture for sale, or distribute for sale in California “Reformulated
12 Products.” For purposes of this Consent Judgment, “Reformulated Products” are defined as
13 Products that: (a) contain a maximum of 90 parts per million lead by weight in any accessible
14 component (i.e., any part, feature or aspect of a Product that may be touched during use)
15 analyzed pursuant to EPA testing methodologies 3050B and 6010B; and (b) yield a result no
16 more that of 1.0 micrograms lead when sampled according to the NIOSH 9100 testing protocol,
17 and analyzed pursuant to EPA Test Methods 3050B and 6010B. In addition to the EPA test
18 methods authorized above, the Parties may utilize equivalent methodologies employed by state
19 or federal agencies to determine lead content in a solid substance.

20 **2.2 Warnings on Products in Inventory**

21 Notwithstanding Section 2.1 above, commencing on January 1, 2015, Pacific shall ensure
22 that any and all Products that are not Reformulated Products as defined in paragraph 2.1, *supra*,
23 that are in, or manufactured and en route to, Defendants’ inventory as of January 1, 2015 that
24 Defendants reasonably believe may be sold or distributed for sale in California, shall contain the
25 following clear and reasonable warning placed on the packaging for the Product: “**WARNING:**
26 This product contains lead, a chemical known to the State of California to cause birth defects and
27 other reproductive harm.” Each warning in the preceding sentence shall be prominently placed
28 with such conspicuousness as compared with other words, statements, designs, or devices as to

1 render it likely to be read and understood by an ordinary individual under customary conditions
2 before purchase, and each such warning shall be provided in a manner such that the consumer or
3 user understands to which specific Product the warning applies, so as to minimize the risk of
4 consumer confusion.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

7 In settlement of all the claims referred to in this Consent Judgment, Pacific has been
8 assessed a cumulative total of \$26,000 in civil penalties. Each civil penalty payment shall be
9 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
10 percent (75%) of the funds paid to the California Office of Environmental Health Hazard
11 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held. All civil
12 penalty payments shall be delivered to the payment addresses provided in Section 3.3.1.

13 **3.1.1 Initial Civil Penalty**

14 Within five (5) business days after the Effective Date, Pacific shall make an initial civil
15 penalty payment of \$11,000. Pacific shall provide the initial payment in two checks for the
16 following amounts made payable to: (a) “OEHHA” in the amount of \$9,750 and (b) “Anthony
17 Held, Client Trust Account” in the amount of \$3,250.

18 **3.1.2 Final Civil Penalty**

19 On or before five (5) business days after the Effective Date, Pacific shall make a final
20 civil penalty payment of \$15,000. Pacific shall provide the final civil penalty payment in two
21 checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$11,250; and
22 (b) “Anthony Held, Client Trust Account” in the amount of \$3,750.

23 **3.1.3 Partial Penalty Waivers**

24 Pursuant to title 11 California Code of Regulations, section 3203(c), (a) \$7,500 of the
25 final civil penalty payment shall be waived if, no later than February 27, 2015, an officer of
26 Pacific provides Held with written certification that, as of that date, all of the Products sold or
27 distributed for sale in California by Defendants are Reformulated Products, and that Defendants
28 will continue to offer only Reformulated Products in California; and (b) an additional \$7,500 of

1 the final civil penalty payment shall be waived if, no later than February 27, 2015, an officer of
2 Pacific provides Held with written certification that Defendants have complied with the
3 requirements of Section 2.2 of this Consent Judgment. The option to certify timely reformulation
4 and compliance with warning labeling requirements in lieu of making the final civil penalty
5 payment required by this Section 3.1.3 is a material term, and time is of the essence.

6 **3.2 Reimbursement of Fees and Costs**

7 The parties acknowledge that Held and his counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
9 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly
10 after the other settlement terms had been finalized Defendants expressed a desire to resolve the
11 fee and cost issue. The Parties then attempted to (and did) reach an accord on the compensation
12 due to Held and his counsel under general contract principles and the private attorney general
13 doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed
14 through the mutual execution of this Consent Judgment. Specifically, Pacific shall pay a
15 cumulative total of \$42,000 for the fees and costs incurred by Held in investigating and bringing
16 this matter to Defendants' attention, preparing and filing a complaint and negotiating a
17 settlement in the public interest. Pacific shall pay the full payment required under this Section
18 3.2 to Plaintiff's counsel "in trust" no later than the Effective Date. Such funds shall be released
19 and paid in accordance with the payment procedures set forth below in Section 3.3 within two
20 (2) days after the Effective Date.

21 **3.3 Payment Procedures**

22 **3.3.1 Payment Addresses**

23 (a) All payments and tax documentation for Held and his counsel
24 shall be delivered to:

25 Moscone Emblide Sater & Otis LLP
26 Attn: Proposition 65 Controller
27 220 Montgomery Street, Suite 2100
28 San Francisco, CA 94104

(b) All payments to OEHHA, shall be delivered directly to OEHHA (Memo

1 line “Prop 65 Penalties”) at one of the following addresses, as appropriate:

2 For United States Postal Service Delivery:

3 Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 P.O. Box 4010
7 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery or Courier:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95812-4010

14 with a copy of the checks payable to OEHHA mailed to the payment address provided in section
15 3.3.1(a), as proof of payment to OEHHA.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Held’s Public Release of Proposition 65 Claims**

18 Held, acting on his own behalf and in the public interest, releases Defendants and their
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers,
20 employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly
21 distribute or sell the Products, including but not limited to its downstream distributors,
22 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
23 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned
24 exposures to lead from the Products sold by Pacific and Target prior to the Effective Date, as
25 set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes
26 compliance with Proposition 65 with respect to exposures to lead from the Products. Plaintiff
27 agrees that any and all claims in the Complaint are resolved by this Consent Judgment.

28 **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 Pacific, Target, 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,

1 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
2 or actual exposures to lead in the Products sold or distributed for sale by Pacific and/or Target
3 before the Effective Date.

4 **4.3 Pacific's Release of Held**

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

11 **4.4 Section 1542 Release**

12 Held, in his individual capacity only and *not* in his representative capacity, and Pacific,
13 by signature of this Consent Judgment, hereby waives any rights as set forth in paragraphs 4.1,
14 4.2, or 4.3 above under California Civil Code Section 1542 with full knowledge and intent of
15 doing so. California Civil Code Section 1542 states:

16 "1542. A general release does not extend to claims which the creditor does not
17 know or suspect to exist in his or her favor at the time of executing the release,
18 which if known by him or her must have materially affected his or her settlement
19 with the debtor."

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
21 year after it has been fully executed by the Parties.

22 The Parties acknowledge that, pursuant to California Health and Safety Code section
23 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
24 motion Held shall draft and file and Pacific shall support, appearing at the hearing if so
25 requested. In furtherance of obtaining such approval, Held and Pacific agree to mutually employ
26 their best efforts, and that of their counsel, to support the entry of this agreement as judgment,
27 and to obtain judicial approval of their settlement in a timely manner. For purposes of this
28

1 Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the
2 necessary moving papers and supporting the motion for judicial approval. If any third-party
3 objection to the motion is filed, Held and Pacific agree to work together to file a response and
4 appear at any hearing. This provision is a material component of the Consent Judgment and
5 shall be treated as such in the event of a breach.

6 If the Court does not approve the Consent Judgment, the Parties agree to meet and confer
7 as to whether to modify the language or appeal the ruling. If the Parties do not jointly agree on a
8 course of action to take, then the case shall proceed in its normal course on the Court's trial
9 calendar. If the Court's approval is ultimately overturned by an appellate court, the Parties shall
10 meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do
11 not jointly agree on a course of action to take, then the case shall proceed in its normal course on
12 the Court's trial calendar.

13 6. **SEVERABILITY**

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

17 7. **GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of
19 California and apply within the state of California. In the event that Proposition 65 is repealed,
20 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
21 Products, then Pacific may provide written notice to Held of any asserted change in the law, and
22 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
23 extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted
24 to relieve Pacific and/or Target from any obligation to comply with any pertinent state or federal
25 toxics control laws.

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:
5

6 For Pacific:

7 Ms. Mei Xu
8 President
9 Pacific Trade International, Inc.
5515 Security Lane, Suite 1100
Rockville, MD 20852

10
11 with a copy to:

12 Chris M. Amantea, Esq.
13 Squire Patton Boggs (US) LLP
555 South Flower St., 31st Floor
Los Angeles, CA 90071

14
15 For Held:

16 Moscone Emblide Sater & Otis LLP
17 Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

26 Held agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code section 25249.7(f).
28

1 **11. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
3 and entry of a modified consent judgment by the Court thereon; or (ii) a successful motion or
4 application of any Party, and the entry of a modified consent judgment by the Court.

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and have read,
7 understood, and agree to all of the terms and conditions contained herein.

8
9
10 **AGREED TO:**


11 ANTHONY E. HELD

12
13 Date: Anthony E Held

14
15 By: February 11, 2015

AGREED TO:

PACIFIC TRADE INTERNATIONAL, INC.

16
17 Date:  2-10-2015

18
19 By: CEO
20 Name: MEI XU
21 Title: CEO