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10 ANTHONY E. HELD, PH.D.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, PH.D.,

17 Plaintiff,

18 v.

19 PASCO SPECIALTY & MFG., INC.; et al.,

20 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 **1. INTRODUCTION**

2 **1.1 Parties**

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

12 **1.2 General Allegations**

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

18 **1.3 Product Description**

19 The products covered by this Consent Judgment are tools with vinyl/PVC grips
20 containing DINP, including, but not limited to, the *Pasco Quick Set Drain Wrench, #7099, UPC*
21 *#6 71451 70990 5* (collectively, “Products”).

22 **1.4 Notice of Violation**

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

1 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATED PRODUCTS**

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

7 **3. MONETARY SETTLEMENT TERMS**

8 **3.1 Civil Penalty Payments**

9 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
10 alleged in the Notice or referred to in this Settlement Agreement, Pasco agrees to pay \$16,900 in
11 civil penalties. The penalty payments will be allocated in accordance with California Health and
12 Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the
13 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
14 25% of the penalty amount paid to Held.

15 **3.1.1 Initial Civil Penalty**

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

20 **3.1.2 Final Civil Penalty – Accelerated Reformulation**

21 On or before October 31, 2016, Pasco shall make a final civil penalty payment of
22 \$14,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that
23 the final civil penalty payment shall be waived in its entirety if, no later than October 25, 2016,
24 an officer of Pasco provides Held with written certification that all of the Products purchased for
25 sale or manufactured for sale in California as of the date of such certification are Reformulated
26 Products as defined by Section 2.1, and that Pasco will continue to offer only Reformulated
27 Products in California in the future. The option to certify to accelerated reformulation in lieu of

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

3 **3.2 Attorneys' Fees and Costs**

4 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
6 issue to be resolved after the material terms of the agreement had been settled. Shortly after the
7 other settlement terms had been finalized, the Parties negotiated a resolution of the compensation
8 due to Held and his counsel under general contract principles and the private attorney general
9 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed
10 through the mutual execution of this agreement and the Court's approval of the same, but
11 exclusive of fees and costs on appeal, if any, Pasco shall reimburse Held and his counsel
12 \$23,000. Pasco's payment shall be delivered to the address in Section 3.4 in the form of a check
13 payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by
14 Held investigating, bringing this matter to Pasco's attention, litigating, and negotiating a
15 settlement of the matter in the public interest.

16 **3.3 Payment Timing; Payments Held in Trust**

17 With the exception of the final civil penalty payment required by Section 3.1.2, Pasco
18 shall deliver all payments required by this Consent Judgment to its counsel within one week of
19 the date that this agreement is fully executed by the Parties. Pasco's counsel shall confirm
20 receipt of settlement funds in writing to Held's counsel and, thereafter, hold the amounts paid in
21 trust until such time as the Court grants the motion for approval of the Parties' settlement
22 contemplated by Section 5. Within two days of the Effective Date, Pasco's counsel shall deliver
23 all settlement payments it has held in trust to Held's counsel at the address provided in Section
24 3.4. In the event the final civil penalty payment required by Section 3.1.2 becomes due prior to
25 the Effective Date, then Pasco shall deliver the final civil penalty payment to its attorney to be
26 held in trust until, and disbursed within two days after, the Effective Date.

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1 **3.4 Payment Address**

2 All payments under this Settlement Agreement shall be delivered to:

3 The Chanler Group
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Held’s Public Release of Proposition 65 Claims**

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

15 **4.2 Held’s Individual Release of Claims**

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

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1 **4.3 Pasco Release of Held**

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

7 **4.4 Mutual Waiver of California Civil Code Section 1542**

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

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

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

21 **5. COURT APPROVAL**

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

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

19 For Held:

20 Proposition 65 Coordinator
21 The Chanler Group
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710
Ph: (510) 848-8880
Fax: (510) 848-8118
Email: ctuttle@chanler.com

25 For Pasco:

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

1 With a copy by facsimile and email to:

2
3 Thomas H. Clarke, Jr.
4 Attn: Roxana Riedell
5 Ropers, Majesky, Kohn, & Bentley, PC
6 1001 Marshall Street, Suite 500
7 Redwood City 94063-2052
8 Ph: 650-364-8200
9 Fax: 650-780-1701
10 Email: thomas.clarke@rmkb.com

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

25 **11. POST EXECUTION ACTIVITIES**

26 Held agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
28 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

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

3 **12. MODIFICATION**

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

6 **13. AUTHORIZATION**

7 **13.1** Each of the Parties acknowledges that they had the right and ability to consult
8 with and seek the advice of counsel of their choice and each voluntarily has entered into this
9 Settlement.

10 **13.2** The undersigned affirmatively represent that they are authorized to execute this
11 Settlement on behalf of their respective Parties and have read, understood, and agree to all of the
12 terms and conditions of this document, and further certifies that he or she is fully authorized by
13 the Party he or she represents to execute the Settlement Agreement on behalf of the Party
14 represented and legally bind that Party.

15 **13.3** Except to the extent otherwise noted, each of the Parties shall bear its own costs
16 and fees.

17 **14. DRAFTING**

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

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1 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES AND ENFORCEMENT**

2 **15.1** If a dispute arises with respect to either Party's compliance with the terms of this
3 Settlement Agreement, the Parties shall meet in person or by telephone and endeavor to resolve
4 the dispute in an amicable manner prior to filing of any motion related to the terms and
5 conditions of the Settlement Agreement, for a period of at least thirty (30) days.

6 **15.2** For purposes of this Settlement Agreement only, the Parties stipulate that in the
7 event that enforcement of this Settlement Agreement is deemed necessary by one or both of the
8 Parties, or a dispute between the Parties arises regarding this Settlement Agreement, the Superior
9 Court of California, County of Marin, has proper jurisdiction and venue over the Parties as to the
10 terms and conditions of this Settlement Agreement, that venue is proper in the County of Marin,
11 and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this
12 Settlement Agreement.

13
14 **AGREED TO:**

15 Anthony E. Held
16 ANTHONY E. HELD, PH.D., P.E.

17 Dated: 10/12/2016

AGREED TO:

MTH
PASCO SPECIALTY & MFG., INC.

By: Michael J. Fite
Michael J. Fite

Its: _____
President

Dated: 10-17-16