

1 Cliff Chanler, State Bar No. 135534  
Hudson Bair, State Bar No. 172593  
2 Josh Voorhees, State Bar No. 241436  
Troy Bailey, State Bar No. 277424  
3 THE CHANLER GROUP  
2560 Ninth Street  
4 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
5 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
6 cliff@chanler.com  
hudson@chanler.com  
7 josh@chanler.com  
troy@chanler.com

8  
9 Attorneys for Plaintiffs  
ANTHONY E. HELD, PH.D., P.E.;  
PETER ENGLANDER;  
10 WHITNEY R. LEEMAN, PH.D.; and  
JOHN MOORE  
11

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15 UNLIMITED CIVIL JURISDICTION  
16

17 ANTHONY E. HELD, PH.D., P.E.; PETER  
ENGLANDER; WHITNEY R. LEEMAN,  
18 PH.D.; and JOHN MOORE,

19 Plaintiffs,

20 v.

21 READY AMERICA, INC.; ABLE PLANET,  
INCORPORATED; E.S.I. CASES &  
22 ACCESSORIES, INC.; GROCERY OUTLET  
INC.; QUICK FITTING, INC.; TAP  
23 PLASTICS, INC., A CALIFORNIA  
CORPORATION; and DOES 1-150, inclusive,

24 Defendants.  
25  
26  
27  
28

Case No. RG16803507

**[PROPOSED] CONSENT JUDGMENT  
AS TO QUICK FITTING, INC.**

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

1     **1.     INTRODUCTION**

2             **1.1     Parties**

3             This Consent Judgment is entered into by and between plaintiff Anthony E. Held, PH.D., P.E.  
4     ("Held"), and Quick Fitting, Inc. ("Quick Fitting"), with Held and Quick Fitting each individually  
5     referred to as a "Party" and collectively as the "Parties."

6             **1.2     Plaintiff**

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

10            **1.3     Quick Fitting**

11            Quick Fitting employs ten or more individuals and is a "person in the course of doing  
12    business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13    Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

14            **1.4     General Allegations**

15            Held alleges that Quick Fitting manufactures, imports, sells, or distributes for sale in  
16    California, Vinyl/PVC Ball Valve Handles that contain Di(2-ethylhexyl)phthalate ("DEHP") without  
17    first providing the exposure warning required by Proposition 65. DEHP is listed pursuant to  
18    Proposition 65 as a chemical known to the State of California to cause birth defects and other  
19    reproductive harm.

20            **1.5     Product Description**

21            The products covered by this Consent Judgment are vinyl/PVC Ball Valve Handles  
22    containing DEHP that are manufactured, imported, sold, or distributed for sale in California by Quick  
23    Fitting, including but not limited to, the *ProBite 1/2" x 1/2" Full Port Ball Valve, PB912*, hereinafter  
24    the "Products".

25            **1.6     Notice of Violation**

26            On or about April 29, 2015, Held served Quick Fitting, and certain requisite public  
27    enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Quick Fitting  
28    violated Proposition 65 by failing to warn its customers and consumers in California that the Products

1 expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced  
2 and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On February 10, 2016, Held filed the instant action naming Ready America as a defendant for  
5 the alleged violations of Health and Safety Code section 25249.6 that are the subject of an additional  
6 Notice. On February 16, 2016, Held filed the first amended complaint ("Complaint") against Quick  
7 Fitting and additional defendants for the alleged violations of Health and Safety Code section  
8 25249.6 that are the subject of the Notice.

9 **1.8 No Admission**

10 Quick Fitting denies the material, factual, and legal allegations contained in the Notice and  
11 Complaint, and maintains that all of the products it has sold and distributed for sale in California,  
12 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
13 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
14 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an  
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
16 not, however, diminish or otherwise affect Quick Fitting's obligations, responsibilities, and duties  
17 under this Consent Judgment.

18 **1.9 Jurisdiction and Venue**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Quick Fitting as to the allegations contained in the Complaint, that venue is proper  
21 in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of  
22 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" means the date on which  
25 the Motion for Approval of the Consent Judgment is granted by the Court.  
26  
27  
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Quick Fitting shall only  
4 purchase for sale, manufacture, sell, or distribute for sale in California, (a) “Reformulated Products,”  
5 or (b) Products that bear a clear and reasonable warning pursuant and subject to Section 2.2 For  
6 purposes of this Consent Judgment, “Reformulated Products” are defined as Products that contain  
7 DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to  
8 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other  
9 methodology utilized by federal or state government agencies for the purpose of determining DEHP  
10 content in a solid substance. The requirements of Section 2.1 and 2.2 shall not apply to Product that  
11 are no longer in Quick Fitting inventory, possession or control as of Effective Date.

12 **2.2 Clear and Reasonable Warnings**

13 Commencing on the Effective Date and continuing thereafter, for any Products sold or  
14 distributed for sale in California by Quick Fitting that are not Reformulated Products, Quick Fitting  
15 agrees to only offer such Products for sale with a clear and reasonable warning in accordance with  
16 this Section. Quick Fitting further agrees that any warning used will be prominently placed in  
17 relation to the Product with such conspicuousness when compared with other words, statements,  
18 designs, or devices as to render it likely to be read and understood by an ordinary individual under  
19 customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and  
20 reasonable warning for the Products shall consist of a warning affixed directly to a Product or its  
21 accompanying labeling or packaging sold in California containing the following statement:

22 **WARNING:** This product contains DEHP, a chemical known to the State of California to  
23 cause birth defects or and other reproductive harm.

24 In the event that Quick Fitting sells Products via an internet website to customers located in  
25 California, the warning requirements of this section shall be satisfied if the foregoing warning  
26 appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the  
27 same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser  
28 prior to purchase during the checkout process. Alternatively, a symbol may appear adjacent to or

1 immediately following the display, description, price, or checkout listing of the Product, provided  
2 that the warning statement also appears elsewhere on the same web page.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
6 this Consent Judgment, Quick Fitting shall pay \$3,000 in civil penalties. The civil penalty payment  
7 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-  
8 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard  
9 Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to Held.

10 Quick Fitting shall make the civil penalty payment following the procedure set forth in  
11 section 3.3 and 3.4 below in two checks for the following amounts made payable to: (a) “OEHHA” in  
12 the amount of \$2,250; and (b) “Anthony E. Held, PH.D., P.E., Client Trust Account” in the amount  
13 of \$750.

14 **3.2 Reimbursement of Attorney’s Fees and Costs**

15 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
17 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
18 other settlement terms had been finalized, Quick Fitting expressed a desire to resolve Held’s fees and  
19 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and  
20 his counsel under general contract principles and the private attorney general doctrine codified at  
21 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
22 execution of this Consent Judgment. Quick Fitting shall pay \$20,000 for the fees and costs incurred  
23 by Held investigating, bringing this matter to Quick Fitting’s attention, litigating and negotiating a  
24 settlement in the public interest.

25 **3.3 Payments**

26 All payments due under this agreement shall be delivered within five (5) days of the  
27 Effective Date to the address found in Section 3.4 below.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3.4 Payment Address**

All payments required by this Consent Judgment shall be delivered to the following address:

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

**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 Quick Fitting and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the Products including, but not limited to, it’s downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by Quick Fitting 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 Quick Fitting, 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 DEHP in the Products sold or distributed for sale by Quick Fitting before the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Quick Fitting and any other Releasee or Downstream Releasee with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale by Quick Fitting on and after the Effective Date.

1           **4.3 Quick Fitting’s Release of Held**

2           Quick Fitting, 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           **5. COURT APPROVAL**

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

11           **6. SUCCESSORS AND ASSIGNS**

12           This Consent Judgment shall be binding upon and inure to the benefit of the Parties hereto  
13 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of  
14 them.

15           **7. SEVERABILITY**

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

19           **8. GOVERNING LAW**

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

27  
28

1 **9. 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 **Quick Fitting**

7 David Crompton, President  
8 Quick Fitting, Inc.  
9 30 Plan Way  
Warwick, RI 02886

Joshua A. Bloom, Esq.  
Meyers Nave  
555 12th Street, Suite 1500  
Oakland, CA 94607

10 **Held**

11 Proposition 65 Coordinator  
12 The Chanler Group  
13 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **11. POST EXECUTION ACTIVITIES**

21 Held agrees to comply with the reporting form requirements referenced in Health and Safety  
22 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
23 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
24 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and  
25 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial  
26 approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall  
27 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,  
28 supporting the motion, and appearing at the hearing before the Court.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**12. MODIFICATION**

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

**13. AUTHORIZATION**

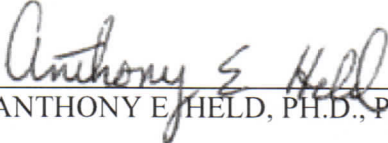
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein

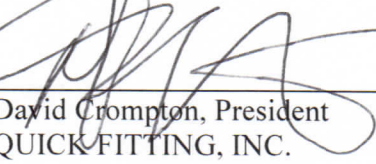
**AGREED TO:**

**AGREED TO:**

Date: 8/5/2016

Date: 8-31-16

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

By:   
David Crompton, President  
QUICK FITTING, INC.