

1 Kimberly Gates Johnson, State Bar No. 282369
SEVEN HILLS LLP
2 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
3 Telephone: (415) 926-7247
kimberly@sevenhillslp.com

4 Attorneys for Plaintiff
5 MY NGUYEN

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

10
11 MY NGUYEN,

12 Plaintiff,

13 v.

14 PASCO SPECIALTY &
MANUFACTURING INC.; and DOES
15 1-30, inclusive,

16 Defendants.

Case No. CGC-21-591022

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff My Nguyen (“**Nguyen**”) and
3 defendant PASCO Specialty & Manufacturing Inc. (“**PASCO**”), with Nguyen and PASCO each
4 individually referred to as a “Party” and, collectively, as the “Parties,” to resolve the allegations in the
5 60-Day Notices of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act
6 of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

7 **1.1 The Parties**

8 Nguyen is a citizen of the state of California seeking to eliminate toxic chemicals in consumer
9 products, to increase public awareness of those chemicals and to promote corporate responsibility.
10 PASCO employs ten or more persons and is a “person in the course of doing business” for purposes
11 of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

12 **1.2 Consumer Product Description**

13 Nguyen alleges PASCO manufactures, imports, sells, or distributes for sale in or into
14 California vinyl tape containing elevated levels of diisononyl phthalate¹ (“**DINP**”), including, but not
15 limited to, the *PASCO 10 Mil. Pipe Wrap Tape, Model No. 9052, ISBN #B000V4D3RM, UPC #6*
16 *71451 90521 5*, without first providing the health hazard warning Nguyen alleges is required by
17 Proposition 65. All such vinyl tape is referred to, hereinafter, as the “**Products**.”

18 **1.3 Notices of Violation**

19 On July 6, 2020, Nguyen served PASCO, the California Attorney General, and the requisite
20 public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging PASCO
21 violated Proposition 65 when it failed to warn California consumers its Products can expose users to
22 DINP, as required. Thereafter, on July 22, 2020, Nguyen served the same parties and entities with
23 an Amended 60-Day Notice of Violation (“**Amended Notice**”), alleging, in addition to consumer
24 exposures, occupational exposures for individuals not covered by the California Occupational Safety
25 and Health Plan who failed to receive a warning, as required, about elevated levels of DINP present
26 in the Products and associated health hazards. The Notice and the Amended Notice are collectively

27 _____
28 ¹ On December 20, 2013, DINP was listed as a chemical known to the State of California to cause cancer. DINP became subject of the clear and reasonable warning requirement one year later.

1 referred to hereinafter as the “**Notices**”. To the best of the Parties’ knowledge, no public enforcer
2 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
3 Notices.

4 **1.4 Complaint**

5 On April 20, 2021, Nguyen commenced the instant action (“Complaint”) in San Francisco
6 Superior Court, *My Nguyen v. PASCO Specialty and Manufacturing Inc., et al*, CGC-21-591022,
7 naming PASCO as a defendant for the violations of Proposition 65 alleged in the Notices.

8 **1.5 No Admission**

9 PASCO denies the factual and legal allegations contained in the Notices and Complaint and
10 maintains all products it sold or distributed for sale in California or caused to be sold or distributed
11 for sale in California, including the Products, have been, and are, in compliance with all laws.
12 Nothing in this Consent Judgment shall constitute or be construed as, nor shall compliance with this
13 Consent Judgment constitute or be construed as, an admission by PASCO of any fact, finding,
14 conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or
15 otherwise affect PASCO’s obligations, responsibilities, and duties under this Consent Judgment.

16 **1.6 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
18 over PASCO as to the allegations contained in the Complaint; venue is proper in San Francisco
19 County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment,
20 pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.7 Effective Date**

22 The term “**Effective Date**” shall mean the date on which the Court approves this Consent
23 Judgment and enter Judgment pursuant to its terms.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 Commencing on the Effective Date and continuing thereafter, all Products PASCO
27 manufactures, imports, sells or distributes for sale in or into California to consumers and users in
28 California or through customers with nationwide distribution or e-commerce sales shall be either: (a)

1 Reformulated Products meeting the Reformulation Standard defined by Section 2.2; (b) Products
2 bearing or accompanied by a clear and reasonable warning pursuant to the following Sections 2.3
3 through 2.5; or (c) as the Product manufacturer, by providing Product warnings and warning
4 information through written or electronic confirmed notice, directly to retail sellers of the Product, in
5 compliance with the specific requirements set forth in the following Section 2.6.

6 **2.2 Reformulation Standard**

7 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
8 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”),
9 diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”),
10 and/or di-n-hexyl phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum
11 concentration of less than 0.1 percent (1,000 parts per million), when analyzed by a laboratory
12 accredited by the State of California, a federal agency, or a nationally recognized accrediting
13 organization. For purposes of compliance with this reformulation standard, testing samples shall
14 be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology
15 CPSC-CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology
16 8270D, or other methodologies utilized by federal or state government agencies to determine
17 phthalate content in a solid substance.

18 **2.3 Clear and Reasonable Warnings Defined**

19 For all Products not meeting the Reformulation Standard *supra*, PASCO shall provide clear
20 and reasonable warnings in accordance with this Section, pursuant to Title 27 California Code of
21 Regulations § 25600, et seq. Each warning shall be prominently placed with such conspicuousness as
22 compared with other words, statements, designs, or devices as to render it likely to be read and
23 understood by an ordinary individual under customary conditions before purchase or use and shall be
24 provided in a manner such that it is clearly associated with the specific Product to which the warning
25 applies.

26 **(a) Warning.** The Warning shall consist of the following statement:



27 **WARNING:** This product can expose you to DINP, which is known to the
28 State of California to cause cancer. For more information go to
www.P65Warnings.ca.gov.

1 **(b) Short-Form Warning.** PASCO may, but is not required to, use the following short-form
2 warning (“**Short-Form Warning**”), subject to the additional requirements in Sections 2.5 and 2.6, as
3 follows:
4

5  **WARNING:** Cancer - www.P65Warnings.ca.gov.

6 **(c) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag
7 used to provide a warning includes consumer information in language(s) other than English, the
8 warning for the Products must also be provided in the other language(s) in addition to English.

9 **2.4 On-Product Warnings**

10 PASCO shall affix a warning to the Product label or otherwise directly on Products provided
11 for sale to consumers and users located in California and to customers with retail outlets in California
12 or nationwide distribution. For the purpose of this agreement, “**Product label**” means a display of
13 written, printed or graphic material that is printed on or affixed to each of the Products or its
14 immediate container or wrapper. A warning provided pursuant to Section 2.3(a) or (b) must print the
15 word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the
16 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
17 outline. However, if the labeling does not use the color yellow, then the symbol may be in black and
18 white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the
19 largest type size used for other consumer information on the Products.

20 **2.5 Internet Warnings**

21 If, after the Effective Date, PASCO sells Products via the internet directly to consumers
22 located in California, PASCO shall provide warnings for each Product both on the Product label in
23 accordance with Section 2.4, and by prominently displaying, or requiring the warning to be
24 prominently displayed to the consumer during the purchase of the Products without requiring
25 customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using
26 the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall
27 appear either: (a) on the same web page on which the Products are displayed; (b) on the same web
28

1 page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or
2 (d) on one or more web pages displayed to a purchaser during the checkout process. The warning
3 shall appear in any of the above instances adjacent to or immediately following the display,
4 description or price of the Products for which it is given in the same type size or larger than other
5 consumer information provided for the Products. The internet warning may use the Short-Form
6 Warning content described in Section 2.3(b) if the warning provided on the Product label also uses
7 the Short-Form Warning content.

8 **2.6 Manufacturer Provision of Warnings to Retail Sellers**

9 As the Product manufacturer, PASCO may also comply with Proposition 65's warning
10 requirements by providing notice directly to the authorized agent for service for retail sellers of its
11 Products, subject to Health & safety Code § 25249.6 and confirmation of receipt, which: (1) states
12 Products may result in an exposure to DINP, (2) includes an exact description of the Product, such as
13 specific identifying information like a UPC, SKU, or other identifying designation; (3) includes all
14 necessary warning materials, such as labels, labeling, shelf signs or tags, premises signs or tags, as
15 detailed in Section 2.4, in addition to internet warning language and information, described in Section
16 2.5; and (4) PASCO sent the foregoing to the authorized agent for the retail seller and obtained
17 confirmation electronically or in writing of receipt of such Notice.

18 If PASCO opts to comply with its duty to warn obligations pursuant to this Section 2.6, by
19 providing a written notice directly to the authorized agent for the retail seller, PASCO understands it
20 is subject to the following additional requirements: (1) Initially, PASCO must show it noticed the
21 retail sellers and must have confirmation, either electronically or in writing, of receipt by the retail
22 sellers' authorized agent for service; (2) thereafter, PASCO must renew such notices annually and
23 retain confirmation of receipt by its retail sellers for the entirety of the period in which the Products
24 are available for sale or sold in California by the retail sellers.

25 Should PASCO name a different or additional chemical endpoint in its warnings, then, to
26 comply with this Section, PASCO must also send an additional notice to its retail sellers within 90
27 days of inclusion of the endpoint.
28

1 **2.7 Compliance with Warning Regulations**

2 PASCO may comply with its duty to warn and the warning requirements of this Section by
3 any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.*, 27 C.C.R. § 25600,
4 *et seq.*, and/or by adhering to the safe harbor guidelines published by the Office of Environmental
5 Health Hazard Assessment and set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of
6 Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time. Should PASCO
7 determine that an additional chemical needs to be added (or referenced), additional endpoint, or
8 should the chemical endpoint change, then, in either of the above warnings, PASCO may modify the
9 content of such warnings to address the new chemical, provided the revised warnings also comply
10 with title 27 Cal. Code Regs. § 25600 *et seq.*

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty**

13 Pursuant to Health and Safety Code § 25249.7(b), PASCO agrees to pay a civil penalty of
14 \$2,500 within five (5) days of the Effective Date. PASCO’s civil penalty payment will be allocated
15 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
16 penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and
17 the remaining twenty-five percent (25%) retained by Nguyen. PASCO shall issue its payment in two
18 checks made payable to: (a) “**OEHHA**” in the amount of \$1,875; and (b) “**My Nguyen**” in the amount
19 of \$625. Nguyen’s counsel shall deliver to OEHHA and Nguyen their respective portions of the
20 penalty payment.

21 **3.2 Reimbursement of Attorneys’ Fees and Costs**

22 Nguyen and his counsel offered to resolve the allegations in the Notice without reaching
23 terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties
24 finalized the other material settlement terms, they negotiated and reached an accord on the amount of
25 reimbursement to be paid to Nguyen’s counsel, under general contract principles and the private
26 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
27 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
28 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and

1 costs on appeal, if any. Within five (5) days of the Effective Date, PASCO shall issue a check in the
2 amount of \$30,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating,
3 bringing this matter to PASCO’s attention, litigating, negotiating a settlement in the public interest,
4 reporting to Office of the California Attorney General, and obtaining the Court’s approval of its
5 terms pursuant to Section 9.

6 **3.3 Payments**

7 All payments payable and due under this Consent Judgment shall be delivered to Nguyen’s
8 counsel at the following address:

9 Seven Hills LLP
10 Attn: Kimberly Gates Johnson
11 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Nguyen’s Release of Proposition 65 Claims**

14 Nguyen, acting on his own behalf, in the public interest, and on behalf of his past and current
15 attorneys and successors and assignees (“**Releasors**”) releases PASCO and its past and present
16 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
17 attorneys and each entity to whom PASCO directly or indirectly distributes or sells the Products
18 including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
19 including, without limitation, Amazon.com, Inc., franchisers, cooperative members, licensors and
20 licensees (“**Releasees**”) for any violations arising under Proposition 65 for unwarned exposures to
21 DINP from Products manufactured or distributed into the State of California by PASCO prior to the
22 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
23 constitutes compliance with Proposition 65 by PASCO with respect to the alleged or actual failure to
24 warn about exposures to DINP from Products manufactured or distributed by PASCO and offered
25 for sale in California after the Effective Date.

26 **4.2 Nguyen’s Individual Release of Claims**

27 Nguyen, in his individual capacity only and *not* in his representative capacity, also provides a
28 release to PASCO and Releasees which shall be effective as a full and final accord and satisfaction, as

1 a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
2 claims, liabilities and demands of Nguyen of any nature, character or kind, whether known or
3 unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, DINP, DBP,
4 BBP, DIDP and DnHP in Products manufactured or distributed into the State of California by
5 PASCO prior to the Effective Date. Nothing in this section shall affect Nguyen's right to commence
6 or prosecute an action under Proposition 65 against a Releasee that does not involve PASCO's
7 Products.

8 **4.3 PASCO's Release of Nguyen**

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

15 **5. COURT APPROVAL**

16 Pursuant to California Health and Safety Code § 25249.7(f)(4), Nguyen shall file a noticed
17 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
18 best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to
19 obtain judicial approval of their settlement in a timely manner. For purposes of this section, "best
20 efforts" shall include, at a minimum, supporting the motion for approval, responding to any third-
21 party objection, and appearing at the hearing before the Court if so requested.

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise

1 rendered inapplicable by reason of law generally, or as to the Products, then PASCO may provide
2 Nguyen with written notice of any asserted change in the law, and shall have no further injunctive
3 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
4 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve PASCO from its
5 obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

7 Unless specified herein, all correspondence and notice required by this Consent Judgment
8 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
9 (ii) a recognized overnight courier to any Party by the other at the following addresses:

10 For PASCO:

11 Michael J. Hite, President
12 PASCO Specialty & Manufacturing Inc.
13 11156 Wright Rd.
14 Lynwood, CA 90262

For Nguyen:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

14 *With a copy to:*

15 Ruben A. Castellón, Esq.
16 RAF Law Group
17 811 Wilshire Blvd., Suite 1050
18 Los Angeles, CA 90017

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

21 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

25 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

26 Nguyen and his counsel agree to comply with the reporting form requirements referenced in
27 California Health and Safety Code § 25249.7(f).

28 **11. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the
Parties with respect to the entire subject matter hereof, and any and all prior discussions,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
2 therein. There are no warranties, representations, or other agreements between the Parties except as
3 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
4 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
5 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
6 exist or to bind any of the Parties hereto.

7 **12. MODIFICATION**

8 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
9 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
10 any party and the entry of a modified Consent Judgment by the Court thereon.

11 **13. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment on behalf of their
13 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
14 Consent Judgment.


15
16 **AGREED TO:**

17 Date: 12/17/21

18 By: 
19 My Nguyen

AGREED TO:

17 Date: 12-18-21

18 By: 
19 Michael J. Hite, President
20 PASCO Specialty & Manufacturing Inc.