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5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

FILED

SEP 22 2009

KIM TURNER
Clerk of the Court
MARIN COUNTY SUPERIOR COURT
By: A. Garcia, Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11 ANTHONY E. HELD,

12 Plaintiff,

13 v.

14 BARRY-OWEN CO., INC., and DOES 1
15 through 150, inclusive,

16 Defendants.

Case No. CIV093188

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
STIPULATION AND ORDER RE:
CONSENT JUDGMENT**

Date: September 17, 2009

Time: 9:00 a.m.

Dept.: B

Judge: Hon. Michael B. Dufficy

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E., and Defendant
2 BARRY-OWEN CO., INC., having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Proposition 65 settlement agreement in the form of a Stipulation and
4 [Proposed] Order Re: Consent Judgment (“Consent Judgment”) entered into by the parties, and
5 following issuance of an order approving this Proposition 65 settlement agreement and entering the
6 Consent Judgment on September 17, 2009.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
8 Procedure §664.6, judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as Exhibit 1.

10
11 IT IS SO ORDERED.
12 SEP 22 2009

13 Dated: _____

MICHAEL R. DUFFICY

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
David Lavine, State Bar No. 166744
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, California 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, Ph.D., P.E.

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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, Ph.D., P.E.,

14 Plaintiff,

15 v.

16 BARRY-OWEN CO., INC.; and DOES 1
17 through 150, inclusive,

18 Defendant.

Case No. CIV 093188

**STIPULATION AND [PROPOSED] ORDER
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Barry-Owen Co., Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter “Held”) and Barry-Owen Co., Inc. (hereinafter “Barry-Owen”), with Held and Barry-
5 Owen collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Barry-Owen employs ten or more persons and is a person in the course of doing business
12 for purposes of Proposition 65.

13 **1.4 General Allegations**

14 Held alleges that Barry-Owen has manufactured, distributed, and/or sold in the State of
15 California children’s vinyl or rubber keychains/toys as well as bracelets with vinyl/rubber charm
16 plugs and other similar jewelry items containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is
17 listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
18 & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of
19 California to cause birth defects and other reproductive harm. DEHP is referred to herein as the
20 “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: (a)
23 children’s vinyl or rubber keychains/toys containing di(2-ethylhexyl)phthalate including, but not
24 limited to, *Hog Wild Keychain, Item #793 (#6 41585 00793 2)*; and (b) bracelets with
25 vinyl/rubber charm plugs and other similar jewelry items containing di(2-ethylhexyl)phthalate
26 including, but not limited to, *Plugs Bracelet, BO-5268 (#7 55545 05268 6)*. All such products
27 containing DEHP are referred to hereinafter as the “Products”.

28

1 **1.6 Notices of Violation**

2 On March 5, 2009, and June 30, 2009, respectively, Held served Barry-Owen and various
3 public enforcement agencies with a “60-Day Notice of Violation” and “Supplemental 60-Day
4 Notice of Violation” (collectively, the “Notices”) that provided Barry-Owen with notice of
5 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the
6 Products that Barry-Owen sold exposed users in California to the Listed Chemical. Barry-Owen
7 represents that it first learned about DEHP in the Products after receiving the 60-Day Notice
8 issued on March 5, 2009. As a result, Barry-Owen began to immediately start the process of
9 reformulating such Products and ceased any future shipment of those Products into California.
10 As of the Effective Date, no public enforcer has diligently prosecuted the allegations set forth in
11 the Notices.

12 **1.7 Complaint**

13 On June 25, 2009, Held, who was and is acting in the interest of the general public in
14 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the
15 County of Marin against Barry-Owen, and Does 1 through 150, alleging violations of Health &
16 Safety Code § 25249.6 based on the alleged exposures to DEHP contained in bracelets with vinyl
17 charm plugs manufactured, distributed and/or sold by Barry-Owen. If, after September 4, 2009,
18 no public enforcer has begun to diligently prosecute Barry-Owen based on the Supplemental
19 Notice, the Complaint shall be deemed amended to include Held’s allegations as to the Listed
20 Chemical in the children’s vinyl or rubber keychains/toys and the bracelets with vinyl charm
21 plugs and other similar jewelry items identified in the Supplemental Notice.

22 **1.8 No Admission**

23 Barry-Owen denies the material factual and legal allegations contained in Held’s Notices
24 and maintains that all products that it has sold and distributed in California, including the
25 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall
26 be construed as an admission by Barry-Owen of any fact, finding, issue of law, or violation of
27 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
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1 by Barry-Owen of any fact, finding, conclusion, issue of law or violation of law, such being
2 specifically denied by Barry-Owen. However, this section shall not diminish or otherwise affect
3 the obligations, responsibilities and duties of Barry-Owen under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the parties stipulate that this Court has
6 jurisdiction over Barry-Owen as to the allegations contained in the Complaint, that venue is
7 proper in the County of Marin and that this Court has jurisdiction to enter and enforce the
8 provisions of this Consent Judgment.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 15,
11 2009.

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

13 **2.1 Reformulation Commitments and Schedule**

14 Except as otherwise provided for in this Agreement, as of the Effective Date, Barry-Owen
15 shall only offer Products for sale in California that are Phthalate Free, as set forth below. For
16 purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products containing
17 less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to
18 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or
19 equivalent methods as may be allowed under Proposition 65. This standard is referred to herein
20 as the "Reformulation Standard".

21 Barry-Owen agrees that 50% of the Products that it offers for sale in California after the
22 Effective Date shall be Phthalate Free. Barry-Owen further commits that 100% of the Products
23 that it offers for sale in California, beginning on December 31, 2009, shall be Phthalate Free.
24 Nothing in this Consent Judgment shall be interpreted to relieve Barry-Owen from any obligation
25 to comply with any pertinent state or federal toxics control laws (e.g., the federal ban on selling
26 childcare items and certain children's toys containing more than 1,000 ppm of DEHP).

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2.2 Product Warnings.

After the Effective Date, except as provided for in this Consent Judgment, Barry-Owen shall not ship, or offer to be shipped for sale in California, Products containing the Listed Chemical unless such Products are shipped with the clear and reasonable warning set out in Section 2.3 and 2.4, or comply with the reformulation requirements set out in Section 2.1.

Any warning issued for Products pursuant to Section 2.3 and 2.4 below shall be prominently placed with such conspicuousness as compared with other words, statements designs or devices to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use, for Products shipped by Barry-Owen for sale in California.

2.3 Warnings for Retail Store Sales

(a) Product Labeling. Barry-Owen may perform its warning obligation by affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold in retail outlets in California by Barry-Owen or its agents, that states:

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

(b) Point-of-Sale Warnings. Barry-Owen may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that states:

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Phthalate Free as defined in Section 2.1), the following statement

1 must be used:¹

2 **WARNING:** The following products contain DEHP, a
3 phthalate chemical known to the State of
4 California to cause birth defects and other
5 reproductive harm:

6 *[List products for which warning is required]*

7 **2.4 Warnings For Catalog and Internet Sales.**

8 Barry-Owen may satisfy its warning obligations for Products it sells via catalog or the
9 Internet for sale in California by providing a warning: (i) in the catalog; or (ii) on the website.
10 No warnings are required for a catalog or Internet website used only for promotion and from
11 which no Products are sold. Warnings given in the catalog or on the website shall identify the
12 specific Product to which the warning applies as further specified in sub sections (a) and (b)
13 below:

14 **(a) Catalog Warning.** Any warning provided in a catalog must be in the
15 same type size or larger than the Product description text within the catalog. The following
16 warning shall be provided on the same page and in the same location as each display of the
17 Product:

18 **WARNING:** This product contains DEHP, a phthalate
19 chemical known to the State of California to
20 cause birth defects and other reproductive
21 harm.

22 Where it is impracticable to provide the warning on the same page and in the same
23 location as the display of the Product, Barry-Owen may utilize a designated symbol (▲) to cross
24 reference the applicable warning and shall define the term “designated symbol” with the
25 following language on the inside of the front cover of the catalog and on the same page as any
26 order form for the Product(s):

27 _____

28 ¹ For purposes of this Consent Judgment, “sold in proximity to other like items” shall mean that the Product
and another product are offered for sale close enough to each other so that the consumer, under customary conditions
of purchase, could not reasonably determine which of the two products is subject to the warning sign.

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WARNING: Certain products identified with this symbol ▲ and offered for sale in this catalog contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display or description of the Product on such page. On each page where the designated symbol appears, Barry-Owen must provide a reference directing the consumer to the warning language and definition of the designated symbol.

(b) Internet Website Warning. A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol ▲ contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm

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2.5 Exceptions to Reformulation or Warning Requirements

Except as otherwise provided for in this Agreement, the reformulation and warning requirements set forth in Sections 2.2 through 2.4 shall not apply to:

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) any Products received by Barry-Owen prior to receipt of the Notice, provided that Barry-Owen does not have actual knowledge, or reason from communications with its suppliers of the Products to believe, that the Listed Chemical is present in such Products in concentrations exceeding 1000 ppm each; or
- (ii) Phthalate Free Products (as defined in Section 2.1 above).

3. MONETARY PAYMENTS

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

In settlement of all the claims referred to in this Consent Judgment against it, Barry-Owen shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held as provided by California Health & Safety Code §25249.12(d). Barry-Owen shall issue two separate checks for the penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$1,500, representing 75% of the total penalty, and (b) one check to Hirst & Chanler LLP in Trust for Held in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and to Held whose address and tax identification number shall be furnished, upon request, five calendar days before payment is due. The payments shall be delivered on or before July 25, 2009, at the following address:

1 Hirst & Chanler LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. REIMBURSEMENT OF FEES AND COSTS**

7 **4.1 Attorney Fees and Costs**

8 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
10 issue to be resolved after the material terms of the agreement had been settled. After the other
11 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the
12 compensation due to Held and his counsel under general contract principles and the private
13 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
14 work performed through the mutual execution of this agreement. Barry-Owen shall reimburse
15 Held and his counsel for fees and costs incurred as a result of investigating, bringing this matter
16 to Barry-Owen's attention, and litigating and negotiating a settlement in the public interest.
17 Barry-Owen shall pay Held and his counsel \$24,600 for fees and costs incurred as a result of
18 investigating, bringing this matter to Barry-Owen's attention, and litigating and negotiating a
19 settlement in the public interest. Barry-Owen shall issue a separate 1099 for fees and costs (EIN:
20 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and shall be delivered
21 on or before July 25, 2009, to the following:

22 Hirst & Chanler LLP
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710

27 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

28 Pursuant to CCP §§1021 and 1021.5, the parties further agree that Barry-Owen will
reimburse Held and his counsel for their reasonable fees and costs incurred in seeking judicial
approval of this Consent Judgment in the trial court and completing other necessary tasks after

1 the execution of the Consent Judgment in an amount not to exceed \$4,500. Such additional fees
2 and costs, exclusive of fees and costs that may be incurred in the event of an appeal include, but
3 are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
4 requirements referenced in Health & Safety Code §25249.7(f), responding to any third party
5 objections, filing of notice of entry of the judgment, corresponding with opposing counsel and
6 appearing before the Court related to the approval process.

7 Reimbursement of such additional fees and costs shall be due within ten calendar days
8 after receipt of a billing statement from Held ("Additional Fee Claim"). Payment of the
9 Additional Fee Claim shall be made to "Hirst & Chanler LLP," and the payment shall be
10 delivered, at the following address:

11 Hirst & Chanler LLP
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 Barry-Owen has the right to object to the amount of any Additional Fee Claim asserted by
17 Held and may submit the resolution of this issue to the American Arbitration Association (AAA)
18 in Northern California to determine the reasonableness of the Additional Fee Claim, provided that
19 any notice of objection or decision to arbitrate is received by Held by the end of the ten calendar
20 days after receipt of the Additional Fee Claim. If an arbitration notice is not filed with AAA in a
21 timely manner, Held may file a motion with the Court pursuant to both CCP §1021.5 and this
22 Consent Judgment to recover additional attorney fees and costs incurred as set forth in this
23 paragraph. In the event Barry-Owen submits the matter to arbitration, Held may seek, pursuant to
24 CCP §1021.5, reasonable attorney fees and costs incurred for the arbitration.

25 **5. RELEASE OF ALL CLAIMS**

26 **5.1 Release of Barry-Owen and Downstream Customers**

27 In further consideration of the promises and agreements herein contained, and for the
28 payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and
current agents, representatives, attorneys, successors and/or assignees, and in the interest of the

1 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
2 form of legal action and releases all claims, including, without limitation, all actions, and causes
3 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
4 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
5 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
6 (collectively "Claims"), that were brought or could have been brought against Barry-Owen and
7 its affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
8 shareholders, agents, employees, and sister and parent entities and each of Barry-Owen's
9 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, (including but
10 not limited to Gilroy Gardens) franchisees, dealers, customers, owners, purchasers, users, parent
11 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
12 representatives, shareholders, agents, employees and sister and parent entities (collectively
13 "Releasees") that arise under Proposition 65 or any other statutory or common law Claims that
14 could have been asserted including such Claims as relate to Barry-Owen's and each of its
15 Releasees alleged failure to warn about exposures to or identification of the Listed Chemical
16 contained in the Products.

17 In addition to the foregoing, Held, on behalf of himself, his past and current agents,
18 representatives, attorneys and successors and/or assigns, and *not* in his representative capacity,
19 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
20 action and releases all Claims against Barry-Owen and each of its Releasees. This additional
21 release, which Held is providing in his individual capacity is limited to those claims that arise
22 with respect to Proposition 65, as such Claims relate to Barry-Owen's alleged failure to warn
23 about exposures to or identification of any chemicals listed under Proposition 65 contained in
24 Products sold by Barry-Owen.

25 **5.2 Barry-Owen's Release of Held**

26 Barry-Owen waives any and all claims against Held, his attorneys and other
27 representatives, for any and all actions taken or statements made (or those that could have been
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1 taken or made) by Held and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and/or with respect to the Products.

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one
7 year after it has been fully executed by all parties, in which event any monies that have been
8 provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded
9 within fifteen (15) days after receiving written notice from Barry-Owen that the one-year period
10 has expired.

11 **7. SEVERABILITY**

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

15 **8. GOVERNING LAW**

16 The terms of this consent judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or
18 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the
19 Products, then Barry-Owen shall provide written notice to Held of any asserted change in the law,
20 and shall have no further obligations pursuant to this consent judgment with respect to, and to the
21 extent that, the Products are so affected.

22 **9. NOTICES**

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

Peter M. Morrisette, Esq.
Cox, Castle & Nicholson LLP
555 California Street, Floor 10
San Francisco, CA 94104

To Held:

Proposition 65 Coordinator
Hirst & Chanler, LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

10. COUNTERPARTS, FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same documents.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Held, Barry-Owen and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers, asserting any oral argument in support of the required motion for judicial approval, and defending any appellate review of the Court's approval.

1 **13. MODIFICATION AND ATTORNEY FEES**

2 This consent judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified consent judgment by the Court. In the event that, after
5 execution of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions
6 of this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment,
7 the prevailing party shall be entitled to reasonable attorney fees and costs.

8 **14. AUTHORIZATION**

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

12 **AGREED TO:**

13 Date: 07/10/2009

14 By: *Anthony E. Held*
15 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: _____

By: _____
Defendant, BARRY-OWEN CO., INC.

17 **APPROVED AS TO FORM:**

18 Date: 7/10/09

19 HIRST & CHANLER LLP
20 By: *Clifford A. Chanler*
21 Clifford A. Chanler
22 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:

Date: _____

COX CASTLE & NICHOLSON LLP
By: _____
Peter M. Morrisette
Attorneys for Defendant
BARRY-OWEN CO., INC.

1 **13. MODIFICATION AND ATTORNEY FEES**

2 This consent judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified consent judgment by the Court. In the event that, after
5 execution of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions
6 of this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment,
7 the prevailing party shall be entitled to reasonable attorney fees and costs.

8 **14. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment

12 **AGREED TO:**

AGREED TO:

13 Date: _____

13 Date: 7/24/09 _____

14 By: _____
15 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

14 By: *Scott G. ...*
15 Defendant, BARRY-OWEN CO., INC.

16 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

17 Date: _____

17 Date: _____

18 THIRST & CHANLER LLP

18 COX CASTLE & NICHOLSON LLP

19 By: _____
20 Clifford A. Chanler
21 Attorneys for Plaintiff
22 ANTHONY E. HELD, Ph.D., P.E.

19 By: _____
20 Peter M. Morrisette
21 Attorneys for Defendant
22 BARRY-OWEN CO., INC.

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of this Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the prevailing party shall be entitled to reasonable attorney fees and costs.

14. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: _____
Defendant, BARRY-OWEN CO., INC.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: 7/21/2009

HIRST & CHANLER LLP

COX CASTLE & NICHOLSON LLP

By: _____
Clifford A. Chanler
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: Peter M. Morrisette
Peter M. Morrisette
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