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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,)

13 Plaintiff,)

14 v.)

15 GOLDEN DELTA ENTERPRISES, INC.;)
16 PLEASER USA, INC.; *et al.*,)

17 Defendants.)
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Case No. 1-12-CV-225570

[PROPOSED] CONSENT JUDGMENT

Dept:

Judge:

Date: None set

Complaint Filed: May 30, 2012

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Golden Delta Enterprises, Inc., and Pleaser USA, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (“Held” or “Plaintiff”) on the one hand and Golden Delta Enterprises, Inc. (“Golden Delta”) and
5 Pleaser USA, Inc. (“Pleaser”) on the other hand, with Golden Delta and Pleaser collectively referred
6 to as the “Defendants” and Plaintiff and Defendants collectively referred to as the “Parties.”

7 **1.2 Anthony E. Held, Ph.D., P.E.**

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

11 **1.3 Golden Delta Enterprises, Inc. and Pleaser USA, Inc.**

12 Held alleges that Golden Delta and Pleaser each employ ten or more persons and are both
13 individually a person in the course of doing business for purposes of the Safe Drinking Water and
14 Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition
15 65”).

16 **1.4 General Allegations**

17 Defendants have manufactured, imported, distributed and/or sold in California Halloween
18 costume accessories that contain lead, without the requisite Proposition 65 warnings. Lead is on the
19 Proposition 65 list as known to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as Halloween costume
22 accessories that contain lead including, but not limited to, *Funtasma Roman, Item #ROMAN-12 (#8*
23 *85487 31171 5)*, manufactured, imported, distributed and/or sold by Golden Delta and Pleaser in the
24 State of California, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On or about January 31, 2012, Held served Golden Delta, Pleaser, and various public
27 enforcement agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that
28 provided the recipients with notice of alleged violations of California Health & Safety Code

1 § 25249.6 based on Defendants’ alleged failure to warn consumers that the Products exposed users
2 in California to lead. To the best of the Parties’ knowledge, no public enforcer has prosecuted the
3 allegations set forth in the Notice.

4 **1.7 Complaint**

5 On May 30, 2012, Held filed a complaint in the Superior Court in and for the County of
6 Santa Clara against Golden Delta Enterprises, Inc.; Pleaser USA, Inc.; and Does 1 through 150,
7 *Held v. Golden Delta Enterprises, Inc., et al.*, Case No. 1-12-CV-225570 (“Complaint” or
8 “Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged
9 exposures to lead contained in certain Halloween costume accessories sold by Defendants.

10 **1.8 No Admission**

11 Golden Delta and Pleaser deny the material, factual and legal allegations contained in Held’s
12 Notice and Complaint and maintain that all products they have sold, manufactured, imported and/or
13 distributed in California, including the Products, have been and are in compliance with all laws.
14 Nothing in this Consent Judgment shall be construed as an admission by Golden Delta and Pleaser
15 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent
16 Judgment constitute or be construed as an admission by Golden Delta and Pleaser of any fact,
17 finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or
18 otherwise affect Golden Delta and Pleaser’s obligations, responsibilities, and duties under this
19 Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Golden Delta and Pleaser as to the allegations contained in the Complaint, that
23 venue is proper in the County of Santa Clara and that this Court has jurisdiction to enter and enforce
24 the provisions of this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 15,
27 2013.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation Standards**

3 “Reformulated Products” are defined as those Products containing lead in concentrations
4 less than 100 parts per million (“ppm”) when analyzed pursuant to Environmental Protection
5 Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or
6 state agencies for the purpose of determining lead content in a solid substance and which yield no
7 more than 1.0 micrograms of lead when analyzed pursuant to NIOSH Test Method 9100 performed
8 on any accessible component (i.e. any component part that may be handled, touched or mouthed
9 during the reasonably foreseeable use or misuse by a consumer).

10 **2.2 Reformulation Commitment**

11 As of the Effective Date, Golden Delta and Pleaser maintain that all Products are currently
12 in compliance with Section 2.1 above and agree to remain in compliance such that they shall not
13 manufacture, import, distribute, sell or offer the Products for sale in the State of California unless
14 they are Reformulated Products pursuant to Section 2.1 above.

15 **3. MONETARY PAYMENTS**

16 In settlement of all the claims referred to in this Consent Judgment, Golden Delta and
17 Pleaser shall pay a total of \$6,000 in civil penalties in accordance with this Section, subject to parts
18 of the penalty being waived, as set forth below. Each penalty payment will be allocated in
19 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
20 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the
21 remaining 25% of the penalty remitted to Held, as follows:

22 **3.1 Initial Civil Penalty**

23 Golden Delta and Pleaser shall pay an initial civil penalty in the amount of \$2,000 on or
24 before March 27, 2013. Golden Delta and Pleaser shall issue two separate checks to: (a) “OEHHA”
25 in the amount of \$1,500; and (b) “The Chanler Group in Trust for Anthony E. Held” in the amount
26 of \$500. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

1 **3.2 Final Civil Penalty**

2 The final civil penalty of \$4,000 has been waived as an officer of Golden Delta and Pleaser
3 has provided Held with written certification that, as of the date of such certification and continuing
4 into the future, Golden Delta and Pleaser have met the reformulation standard specified in Section 2
5 above, such that all Products manufactured, imported, distributed, sold and offered for sale in
6 California by Golden Delta and Pleaser are Reformulated Products. The certification in lieu of a
7 final civil penalty payment provided by this Section is a material term.

8 **3.3 Payment Procedures**

9 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

10 (a) All payments owed to Held, pursuant to Sections 3.1 through 3.2, shall
11 be delivered to the following payment address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections
18 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line “Prop
19 65 Penalties”) at the following addresses:

20 For United States Postal Service Delivery:

21 Mike Gyrics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010
25 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyrics
28 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

1 With a copy of the checks payable to OEHHA mailed to The Chanler
2 Group at the address set forth above in 3.3.1(a), as proof of payment to
3 OEHHA.

4 **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Golden Delta and
5 Pleaser shall issue separate 1099 forms for each payment to Held, whose address and tax
6 identification number shall be furnished upon request after this Consent Judgment has been fully
7 executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

9 The parties acknowledge that Held and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. Held then
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
13 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Held
14 and his counsel under general contract principles and the private attorney general doctrine codified
15 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
16 execution of this agreement. Golden Delta and Pleaser shall pay \$13,000 for fees and costs incurred
17 as a result of investigating, bringing this matter to Golden Delta and Pleaser’s attention, and
18 negotiating a settlement in the public interest. Golden Delta and Pleaser shall issue a separate 1099
19 for fees and costs (EIN: 94-3171522), shall make the check payable to “The Chanler Group” and
20 shall deliver payment on or before March 27, 2013, to the address listed in Section 3.3.1(a) above.

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1 Held’s Public Release of Proposition 65 Claims**

23 Held acting on his own behalf and in the public interest releases Golden Delta and Pleaser
24 from all claims for violations of Proposition 65 up through the Effective Date based on exposure to
25 lead from the Products as set forth in the Notice. Compliance with the terms of this Consent
26 Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from the
27 Products as set forth in the Notice.

1 **5.2 Held’s Individual Release of Claims**

2 Held also, in his individual capacity only and *not* in his representative capacity, provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
5 liabilities and demands of Held of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the lead in the
7 Products manufactured, distributed or sold by Golden Delta and Pleaser.

8 **5.3 Golden Delta and Pleaser’s Release of Held**

9 Golden Delta and Pleaser on behalf of themselves, their past and current agents,
10 representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against
11 Held, his attorneys and other representatives, for any and all actions taken or statements made (or
12 those that could have been taken or made) by Held and his attorneys and other representatives,
13 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against
14 it in this matter with respect to the Products.

15 **6. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
18 after it has been fully executed by all parties.

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
26 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
27 Consent Judgment are rendered inapplicable or no longer require as a result of any such repeal or
28 preemption or rendered inapplicable by reason of law generally as to the Products, then Golden

1 Delta and Pleaser shall provide written notice to Held of any asserted change in the law and shall
2 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
3 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
4 Golden Delta or Pleaser from any obligations to comply with any pertinent state or federal toxic
5 control law.

6 **9. NOTICES**

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

11 To Golden Delta and Pleaser:

12 Kenneth E. Chyten, Esq.
13 The Law Office of Kenneth E. Chyten
14 Morgan Stanley Tower
300 E Esplanade, Suite 900
Oxnard, CA 93036

To Held:

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

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

17 **10. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
19 each of which shall be deemed an original, and all of which, when taken together, shall constitute
20 one and the same document. A facsimile or pdf signature shall be as valid as the original.

21 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

24 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

25 Held and Defendants agree to mutually employ their best efforts to support the entry of this
26 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
27 timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code
28 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which

1 Held shall draft and file, and Defendants shall join. If any third party objection to the noticed
2 motion is filed, Held and Defendants shall work together to file a joint reply and appear at any
3 hearing before the Court. This provision is a material component of the Consent Judgment and
4 shall be treated as such in the event of a breach.

5 **13. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties and
7 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
8 of any party and entry of a modified Consent Judgment by the Court.

9 **14. AUTHORIZATION**

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

13
14 AGREED TO:

15 Date: March 18, 2013

16
17 By: Anthony E. Held
18 Plaintiff, Anthony E. Held

14 AGREED TO:

15 Date: 3/7/2013

16
17 By: [Signature]
18 Authorized Signatory for Defendant,
19 Golden Delta Enterprises, Inc.

20 AGREED TO:

21 Date: 3/7/2013

22
23 By: [Signature]
24 Authorized Signatory for Defendant,
25 Pleaser USA, Inc.
26
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