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Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
JOHN MOORE and
ANTHONY E. HELD, PH.D., P.E.

FILED

DEC 02 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE, *et al.*,
Plaintiff,
v.
UNILEVER UNITED STATES, INC.; *et al.*,
Defendants.

Case No.: CIV1500844

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: 12/2/2015
Time: 8:30 AM
Dept. B
Judge: Hon. Roy O. Chernus

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In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant Unilever United States, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: DEC 02 2015

ROY O. CHERNUS

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 Josh Voorhees, State Bar No. 241436
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiffs
JOHN MOORE and
6 ANTHONY E. HELD, PH.D., P.E.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE, *et al.*,
12 Plaintiff,

13 v.

14 UNILEVER UNITED STATES, INC., *et al.*,
15 Defendants.
16

Case No. CIV1500844

**[PROPOSED] CONSENT JUDGMENT
AS TO UNILEVER UNITED STATES,
INC.**

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

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and defendant Unilever United States, Inc. (“Unilever”), with Held and Unilever each individually 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 toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 Plaintiff’s Allegations**

15 Held alleges that Unilever manufactures, imports, sells, or distributes for sale in California, vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP including, but not limited to, the *Motions Salon Haircare Silkening Shine Relaxer System (Gloves)*, #126229, UPC No. 0 87300 60122 9, manufactured, imported, sold, or distributed for sale in California by Unilever, hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about December 22, 2014, Held served Unilever and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Unilever violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose

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

3 **1.7 Complaint**

4 On March 5, 2015, plaintiffs John Moore and Held filed an instant action ("Complaint"),
5 naming various defendants for Proposition 65 allegations concerning exposures to DINP in
6 California. Among them, Unilever was named for its alleged violations of Health and Safety Code
7 section 25249.6 that are the subject of the Notice.

8 **1.8 No Admission**

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

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

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

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on September 1, 2015, and continuing thereafter, Unilever shall only purchase
28 for sale in California, "Reformulated Products." Reformulated Products are products that contain

1 DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
2 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
3 methodology utilized by federal or state government agencies for the purpose of determining DINP
4 content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, Unilever shall pay \$5,000 in civil penalties, after applying a \$10,000 credit
9 for Unilever's commitment to reformulate its Products as set forth in Section 2.1. The civil penalty
10 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with
11 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health
12 Hazard Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The parties acknowledge that Held and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, Unilever expressed a desire to resolve Held's fees and
18 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held's
19 counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
21 execution of this Consent Judgment. Unilever shall pay \$28,000 for the fees and costs incurred by
22 Held investigating, bringing this matter to Unilever's attention, litigating and negotiating a settlement
23 in the public interest.

24 **3.3 Payments Held in Trust**

25 All payments due under this Consent Judgment shall be held in trust until such time as the
26 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
27 within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held
28 in trust by Unilever's counsel until the Court grants the motion for approval of this Consent

1 Judgment contemplated by Section 5. Within two business days of the Court’s approval of this
2 Consent Judgment, Unilever’s counsel shall tender the initial civil penalty payments and attorneys’
3 fee and costs reimbursements required by Sections 3.1 and 3.2.

4 **3.4 Payment Address**

5 All payments required by this Consent Judgment shall be delivered to the following
6 Addressee:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Held’s Public Release of Proposition 65 Claims**

14 Held, acting on his own behalf and in the public interest, releases Unilever and its parents,
15 subsidiaries, affiliated entities under common ownership, and each of their directors, officers,
16 employees, and attorneys (“Releasees”) and each entity to whom the Releasees directly or indirectly
17 distribute or sell the Products including, but not limited to, its downstream distributors, wholesalers,
18 customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream
19 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DINP from
20 Products purchased by Unilever prior to the Effective Date, as set forth in the Notice, and for which
21 a civil fine is assessed pursuant to section 3.1.

22 **4.2 Held’s Individual Release of Claims**

23 Held, in his individual capacity only and *not* in his representative capacity, also provides a
24 release to Unilever, Releasees, and Downstream Releasees which shall be effective as a full and final
25 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
27 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
28 exposures to DINP in the Products purchased by Unilever before the Effective Date.

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4.3 Unilever’s Release of Held

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

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

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1 **8. 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 addressees;

5 **Unilever**

6 Courtney Ozer
7 Senior Counsel Litigation
8 800 Sylvan Avenue
9 Englewood Cliffs, NJ 07632

William F. Tarantino, Esq.
Morrison & Foerster LLP
425 Market Street, 35th Floor
San Francisco, California 94105
Attorneys for Unilever United States, Inc.

10 **Held**

11 The Chanler Group
12 Attn: Proposition 65 Coordinator
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 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 **9. 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 **10. 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, Held and Unilever agree to mutually employ their best
25 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
26 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
27 shall 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.

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11. 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. Should any final judgment or administrative action issued prior to December 31, 2015 result in the removal of DINP from the Proposition 65 list of Chemicals the injunctive relief obligations set forth in Section 2 shall be rendered void and unenforceable.

12. 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: 9/14/2015 _____

Date: _____

By:  _____
ANTHONY E. HELD, P.L.D., P.E.

By: _____
COURTNEY OZER
SENIOR COUNSEL LITIGATION
UNILEVER UNITED STATES, INC.

1 **11. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
4 Party, and the entry of a modified consent judgment by the Court. Should any final judgment or
5 administrative action issued prior to December 31, 2015 result in the removal of DINP from the
6 Proposition 65 list of Chemicals the injunctive relief obligations set forth in Section 2 shall be
7 rendered void and unenforceable.

8 **12. AUTHORIZATION**

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

11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: September 11, 2015

14
15 By: _____
16 ANTHONY E. HELD, PH.D., P.E.

By: Courtney Ozer
COURTNEY OZER
SENIOR COUNSEL LITIGATION
UNILEVER UNITED STATES, INC.

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