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2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
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9 Attorneys for Plaintiffs
10 JOHN MOORE and
11 ANTHONY E. HELD, PH.D., P.E.

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAY - 4 2016

CLERK OF THE COURT
BY: JOSE RIOS MERIDA
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E., *et al.*,

16 Plaintiff,

17 v.

18 CVS CAREMARK CORPORATION, *et al.*,

19 Defendants.

Case No. CGC-15-546785

^{HK}
~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: May 4, 2016

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Harold Kahn

Reservation No. 03140504-01

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Plaintiffs Anthony E. Held, Ph.D., P.E. and John Moore, and defendant Medline Industries, Inc., having agreed through their respective counsel that judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment (“Consent Judgment”), and following this Court’s issuance of an Order approving this Proposition 65 settlement and Consent Judgment on May 4, 2016;

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 1**. 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: 5/4/2016

/s/ HAROLD KAHN
JUDGE OF THE SUPERIOR COURT
HON. HAROLD KAHN



EXHIBIT 1

1 Brian Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANDLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiffs
10 JOHN MOORE and
11 ANTHONY E. HELD, PH.D, P.E.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO

14 ANTHONY E. HELD, PH.D., P.E.,
15 Plaintiff,

16 vs.

17 CVS CAREMARK CORPORATION, CVS
18 PHARMACY, INC. AND DOES 1-150,
19 Defendants.

No. CGC-15-546785

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT MEDLINE
INDUSTRIES, INC.**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. §664.6)

Complaint filed July 9, 2015

20 **1. INTRODUCTION**

21 **1.1 Parties**

22 This Consent Judgment is entered into by and between plaintiffs John Moore (“Moore”) and
23 Anthony E. Held, Ph.D., P.E. (“Held” and collectively with Moore, the “Plaintiffs”), and defendant
24 Medline Industries, Inc. (“Medline”), with Plaintiffs and Medline each individually referred to as a
25 “Party” and collectively as the “Parties.”

26 **1.2 Plaintiff**

27 Plaintiffs are each individuals residing in California who seek to promote awareness of
28 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
substances contained in consumer products.

///

1 **1.3 Defendant**

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

5 **1.4 General Allegations**

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

10 **1.5 Product Description**

11 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that
12 are manufactured, imported, sold, or distributed for sale in California by Medline including, but not
13 limited to, the *CVS Pharmacy Latex-Free, Powder-Free Super-Soft Vinyl Gloves, Item/Model No.*
14 *212654*; the *Nice! Powdered Vinyl Gloves WIC 431794, UPC No. 0 49022 55911 0*; and the *Curad 3G*
15 *Vinyl Powder-Free Synthetic Exam Gloves, Item/Model No. CUR8236T*, hereinafter the “Products.”

16 **1.6 Notices of Violation**

17 On January 23, 2015, plaintiff Anthony E. Held, Ph.D., served Medline’s retail customers in
18 California, defendants CVS Caremark Corporation and CVS Pharmacy, Inc. (collectively, “CVS”),
19 and the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Held Notice”)
20 alleging that CVS violated Proposition 65 by failing to warn its customers and consumers in
21 California that the Products expose users to DINP.

22 On January 30, 2015, Moore served CVS’ supplier of the vinyl gloves at issue, Medline, and
23 the requisite public enforcement agencies with a “60-Day Notice of Violation” (“Moore Notice”)
24 alleging that Medline violated Proposition 65 by failing to warn its customers and consumers in
25 California that the Products expose users to DINP.

26 ///

27 ///

28 ///

1 The Held Notice and Moore Notice are referred to collectively hereinafter as the “Notices.”
2 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting
3 an action to enforce any of the violations alleged in either of the Notices.

4 **1.7 Complaint**

5 On July 9, 2015, Held filed the instant action naming the CVS entities as defendants for the
6 violations that are the subject of the Held Notice. Thereafter, on November 25, 2015, Plaintiffs filed
7 a first amended complaint, the operative pleading in this action (“Complaint”), which added Moore as
8 a plaintiff, and Medline as a defendant.

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Medline as to the allegations in the Complaint, that venue is proper in the San
21 Francisco Superior Court, and that the Court has jurisdiction to enter and enforce the provisions of this
22 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 the
25 motion for approval of this Consent Judgment contemplated by Section 5 is granted by the Court.

26 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

27 **2.1 Commitment to Provide Reformulated Products or Warnings**

28 Subject to the requirements for Medical Grade Products in Section 2.2 below, commencing on

1 the Effective Date and continuing thereafter, Medline shall only purchase for sale, manufacture for
2 sale, or distribute for sale in California “Reformulated Products.” For purposes of this Consent
3 Judgment, Reformulated Products are defined as Products that contain DINP in a maximum
4 concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C or other scientifically validated
6 methodologies of determining DINP content in a solid substance.

7 **2.2 Clear and Reasonable Warnings for Medical Grade Products**

8 Commencing on the Effective Date and continuing thereafter, for non-Reformulated Products
9 that are “Medical Grade Products” only, Medline may sell or distribute such Products for sale in
10 California with a clear and reasonable warning in accordance with this Section. For purposes of this
11 Consent Judgment Medical Grade Products are defined as Products as defined in the Food and Drug
12 Administration’s Medical Glove Guidance Manual. Any warning utilized will be in 10 point font, and
13 prominently placed in relation to the Product with such conspicuousness when compared to other
14 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
15 individual under customary conditions of use. For purposes of this Consent Judgment a clear and
16 reasonable warning shall consist of a warning that contains the following statement:

17 **WARNING:** This product contains DINP, a
18 chemical known to the State of
19 California to cause cancer.

20 If the Product contains a Proposition 65-listed chemical in addition to DINP, that is known to cause
21 birth defects and other reproductive harm:

22
23 **WARNING:** This product contains chemicals that are
24 known to the State of California to cause
25 cancer and birth defects and other reproductive
26 harm.
27
28

1 The parties acknowledge that Medline presently provides a Proposition 65 warning for its gloves, and
2 that the change in warning required by this section will take time. Accordingly, the requirements for
3 font size and contents shall be effective as to all Product manufactured or packaged beginning five
4 months after the effective date.

5
6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payment**

8 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
9 this Consent Judgment, Medline shall pay \$7,500 in civil penalties. The civil penalty payment shall
10 be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
11 percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Plaintiffs to be divided equally
13 between Moore and Held. Medline shall deliver its payment in a single check for \$7,500 made
14 payable to “The Chanler Group, Client Trust Account.” Plaintiffs’ counsel shall be responsible for
15 delivering OEHHA’s portion of the penalty payment to OEHHA.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Plaintiffs and their counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
19 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
20 the other settlement terms had been finalized, the Parties negotiated Medline’s reimbursement of the
21 compensation due to Plaintiffs and their counsel under general contract principles and the private
22 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
23 performed through the mutual execution of this Consent Judgment. On or before the Effective Date,
24 Medline shall pay \$37,000 in a check made payable to “The Chanler Group, Client Trust Account.”
25 Medlines payment shall cover all fees and costs incurred by Plaintiffs investigating, bringing this
26 matter to Medline’s attention, litigating and negotiating a settlement in the public interest.

27 **3.3 Payments Held in Trust**

28 All payments due under this Consent Judgment shall be delivered within ten (10) days of the

1 date that this Consent Judgment is fully executed by the Parties, and held in trust by Medline's
2 counsel until the Court grants the motion for approval of the Parties' settlement. Within two business
3 days of the Effective Date, Medline's counsel shall tender the initial civil penalty payment and
4 attorneys' fee reimbursement required by Sections 3.1 and 3.2.

5 **3.4 Payment Address**

6 All payments under this Consent Judgment shall be delivered to:

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Plaintiffs' Public Release of Proposition 65 Claims**

12 Plaintiffs, each on his own behalf and in the public interest, release Medline and its parents,
13 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
14 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
15 Products including, but not limited to, its downstream distributors, wholesalers, customers
16 (including, without limitation, the CVS defendants, Walgreen Co., and AmerisourceBergen Corp.),
17 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
18 any violations arising under Proposition 65 for unwarned exposures to DINP from Products sold by
19 Medline prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this
20 Consent Judgment constitutes compliance with Proposition 65 with respect to the failure to warn
21 about exposures to DINP in Products manufactured, imported, sold, or distributed for sale in
22 California by Medline after the Effective Date.

23 **4.2 Plaintiffs' Individual Release of Claims**

24 Plaintiffs, each in his individual capacity only and *not* in his representative capacity, also
25 provide a release to Medline, Releasees, and Downstream Releasees which shall be effective as a full
26 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
27 attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiffs of any nature, character
28

1 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to DINP in the Products sold or distributed for sale by Medline before the Effective Date.

3 **4.3 Medline's Release of Held**

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

9 **5. COURT APPROVAL**

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

13 **6. DISMISSAL OF CVS DEFENDANTS**

14 On the later of ten (10) days following the Effective Date or plaintiffs' counsel's receipt of the
15 civil penalty and fee reimbursement payments required by Sections 3.1 and 3.2, plaintiffs shall file a
16 request for dismissal without prejudice as to defendants CVS Caremark Corporation, and CVS
17 Pharmacy, Inc.

18 **7. SEVERABILITY**

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

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California
24 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
25 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Medline may
26 provide written notice to Held of any asserted change in the law, and shall have no further injunctive
27 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
28 so affected.

1 **9. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
3 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return
4 receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Medline:

6
7 Alex Liberman, General Counsel
8 Medline Industries, Inc.
9 1 Medline Place
10 Mundelein, IL 60060

11 with a copy to Medline's counsel:

12
13 Bruce Nye, Esq.
14 Adams Nye Becht, LLP
15 222 Kearney Street, Suite 700
16 San Francisco, CA 94108

17 For Plaintiffs:

18
19 The Chanler Group
20 Attn: Proposition 65 Coordinator
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Held agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, Held and Medline agree to mutually employ their best efforts,

1 and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
2 approval of their settlement in a timely manner For purposes of this Section, "best efforts" shall
3 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
4 supporting the motion, and appearing at the hearing before the Court.

5 **11. MODIFICATION**

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

9 **12. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13
14 Date: 2-26-16

Date: 2-26-16

15
16 By: Anthony E. Held
17 ANTHONY E. HELD, PH.D., P.E.

15
16 By: Andrew Mills
17 Andrew Mills, President Alex Liberman
18 MEDLINE INDUSTRIES, INC. General Counsel

18 **AGREED TO:**

19
20 Date: 3/3/2016

21
22 By: John Moore
23 JOHN MOORE

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