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ENOR CORPORATION

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA COUNTY**
16 **UNLIMITED CIVIL JURISDICTION**

17
18 ANTHONY E. HELD, Ph.D., P.E.,

19 Plaintiff,

20 v.

21 ENOR CORPORATION, and DOES 1
through 150, inclusive,

22 Defendants.

Case No. RG 08379187

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Enor Corporation**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. (“Dr. Held” or “Plaintiff”) and defendant Enor Corporation (“Enor” or “Defendant”), with
5 Plaintiff and Defendant each a “Party” and collectively referred to as “the Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Enor is a person in the course of doing business for purposes of the Safe Drinking Water
12 and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.*
13 (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that Enor has manufactured, distributed and/or sold toys or other
16 children’s products containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of
17 California without providing a warning that DEHP is known to cause birth defects and other
18 reproductive harm pursuant to Proposition 65.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows:
21 children’s sporting items containing the plasticizer phthalate DEHP, such as *EZ Mitt, #25217 (#0*
22 *92211 25217 0)*. All such children’s sporting toys containing DEHP are referred to hereinafter as
23 the “Products.”

24 **1.6 Notice of Violation**

25 On January 11, 2008, Dr. Held served Enor and various public enforcement agencies with
26 a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Enor and public
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1 enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for
2 failing to warn consumers that the Products expose users in California to DEHP.

3 **1.7 Complaint**

4 On March 28, 2008, Dr. Held, who was and is acting in the interest of the general public
5 in California, filed a complaint (“Complaint”) in the Superior Court in and for the County of
6 Alameda against Enor and Does 1 through 150, alleging violations of California Health & Safety
7 Code §25249.6 based on the alleged exposures to DEHP contained in the Products sold by Enor.

8 **1.8 No Admission**

9 Enor denies the material, factual, and legal allegations contained in Dr. Held’s Notice and
10 Complaint and maintains that all Products that it has sold and distributed in California have been
11 and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
12 admission by Enor of any fact, finding, issue of law, or violation of law, nor shall compliance
13 with this Consent Judgment constitute or be construed as an admission by Enor of any fact,
14 finding, conclusion, issue of law, or violation of law, such being specifically denied by Enor.
15 However, this Section shall not diminish or otherwise affect Enor’s obligations, responsibilities,
16 and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Enor as to the allegations contained in the Complaint, that venue is proper in the
20 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean June 4,
24 2008.

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1 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

2 **2.1 Product Reformulation**

3 After the Effective Date, Enor shall not sell, ship, or offer for sale in California Products
4 containing DEHP in excess of 1,000 parts per million (“ppm”).

5 **3. MONETARY PAYMENTS**

6 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

7 In settlement of all the claims referred to in this Consent Judgment, Enor shall pay \$7,000
8 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192,
9 with 75% of these funds remitted to the State of California’s Office of Environmental Health
10 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held
11 as provided by California Health & Safety Code §25249.12(d). Enor shall issue two separate
12 checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust
13 For OEHHA” in the amount of \$5,250, representing 75% of the total penalty; and (b) one check
14 to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$1,750, representing 25%
15 of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,
16 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
17 information shall be provided five calendar days before the payment is due.

18 Payment shall be made in two installments of \$3,500 on June 13, 2008, and \$3,500 on
19 September 12, 2008, and shall be delivered to Dr. Held’s counsel at the following address:

20 HIRST & CHANLER LLP
21 Attn: Proposition 65 Controller
22 455 Capitol Mall, Suite 605
23 Sacramento, CA 95814

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

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 this fee issue to be resolved after the material terms of the agreement had been settled. Enor then
27 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had

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1 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
2 to Dr. Held and his counsel under the private attorney general doctrine codified at California
3 Code of Civil Procedure (CCP) §1021.5, for all work performed in reaching and finalizing this
4 Consent Judgment. Under the private attorney general doctrine, Enor shall reimburse Dr. Held
5 and his counsel a total of \$24,000 for fees and costs incurred as a result of investigating, bringing
6 this matter to Enor's attention and negotiating a settlement in the public interest. Payment shall
7 be made in six installments, as follows: \$6,000 on June 13, 2008; \$3,000 on July 11, 2008;
8 \$3,000 on August 13, 2008; \$3,000 on September 12, 2008; \$3,000 on October 13, 2008; \$3,000
9 on November 13, 2008; and \$3,000 on December 12, 2008. Enor shall issue a separate 1099 for
10 fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst & Chanler LLP" and
11 shall be delivered within ten (10) days of the Effective Date to the following address:

12 HIRST & CHANLER LLP
13 Attn: Proposition 65 Controller
14 455 Capitol Mall, Suite 605
15 Sacramento, CA 95814

15 **5. CLAIMS COVERED AND RELEASE**

16 **5.1 Dr. Held's Release of Enor**

17 In further consideration of the promises and agreements herein contained, and for the
18 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
19 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
20 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
21 form of legal action, and releases all claims, apart from those currently pending, including,
22 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
23 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
24 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
25 unknown, fixed or contingent (collectively "Claims"), against Enor and each of its downstream
26 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, including,
27 but not limited to, Wal-Mart Stores, Inc., its affiliates and/or subsidiaries, owners, purchasers,

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1 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
2 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities
3 (collectively "Releasees"). This release is limited to, but is intended to be a full, final, and
4 binding resolution of, those Claims that arise under Proposition 65 as against Enor and Releasees,
5 as such claims relate to Enor's alleged failure to warn about exposures to DEHP contained in the
6 Products.

7 The Parties further understand and agree that this release shall not extend upstream to any
8 entities that manufactured the Products or any component parts thereof, or any distributors or
9 suppliers who sold the Products or any component parts thereof to Enor.

10 **5.2 Compliance with Terms**

11 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
12 future, concerning compliance by Enor and Releasees, with the requirements of Proposition 65
13 with respect to any alleged exposure to DEHP from the Products.

14 **5.3 Enor's Release of Dr. Held**

15 Enor waives any and all claims against Dr. Held, his attorneys, and other representatives
16 for any and all actions taken or statements made (or those that could have been taken or made) by
17 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims
18 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect
19 to the Products.

20 **6. COURT APPROVAL**

21 If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of no
22 force or effect, and cannot be used in any proceeding for any purpose. This Consent Judgment
23 shall be null and void if, for any reason, it is not approved and entered by the court within six
24 months after it has been fully executed by all Parties, in which event any monies that have been
25 provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
26 refunded within fifteen (15) days after receiving written notice from Enor. Dr. Held agrees to file
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1 his motion to approve within thirty days of the Effective Date and request a hearing date on such
2 motion within 60 days of the date that he files such motion.

3 **7. ATTORNEYS' FEES**

4 In the event that, after the execution of this Consent Judgment: (1) a dispute arises with
5 respect to any provision of this Consent Judgment; or (2) either Party seeks to enforce the terms
6 of this Consent Judgment, the prevailing Party shall be entitled to reasonable attorneys' fees and
7 costs.

8 **8. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply only to Products that are sold within the State of California. In the event that
11 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as
12 to the Products, then Enor shall provide written notice to Dr. Held of any asserted change in the
13 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
14 to the extent that, the Products are so affected.

15 **9. NOTICES**

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

20 To Enor:

21 Steven Udwin
22 ENOR CORPORATION
23 245 Livingston St.
Northvale, NJ 07647

24 With a copy to:

25 Jeffrey B. Margulies
26 FULBRIGHT & JAWORSKI LLP
27 555 South Flower Street
41st Floor
28 Los Angeles, California 90071

1 To Dr. Held:

2 Proposition 65 Coordinator
3 HIRST & CHANLER LLP
4 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

7 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

14 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

15 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a
16 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Dr.
17 Held agrees to file a motion to approve the settlement (“Motion”). Enor shall have no additional
18 responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure §1021.5 or otherwise
19 with regard to reimbursement of any fees and costs incurred with respect to the preparation and
20 filing of the Motion or with regard to Plaintiff’s counsel appearing for a hearing thereon.

21 **13. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the Parties
23 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
24 motion of any Party and entry of a modified Consent Judgment by the Court. The Attorney
25 General shall be served with notice of any proposed modification to this Consent Judgment at
26 least fifteen (15) days in advance of its consideration by the Court. Neither Party shall
27 unreasonably withhold consent to the other Party’s proposed modification.

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