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18 Attorneys for Defendants
19 J.J. PARAMOUNT INTERNATIONAL, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE CITY AND COUNTY OF SAN FRANCISCO
22 UNLIMITED CIVIL JURISDICTION

23 ANTHONY HELD, Ph.D., P.E.,)

24 Plaintiff,)

25 v.)

26 J.J. PARAMOUNT INTERNATIONAL, INC.,)

27 et al.,)

28 Defendants.)

Case No. CGC- 08-479090

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and J.J. Paramount International, Inc.**

3 This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.
4 ("Dr. Held" or "Plaintiff") and defendants J.J. Paramount International, Inc. and Paramount Imports
5 And Wholesale ("Paramount" or "Defendants"), with Plaintiff and Defendants collectively referred
6 to as the "parties."

7 **1.2 Plaintiff Dr. Anthony Held**

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

11 **1.3 Defendants J.J. Paramount International Inc. and Paramount Imports And**
12 **Wholesale**

13 J.J. Paramount International Inc. and Paramount Imports And Wholesale each employs ten
14 or more persons and is a person in the course of doing business for purposes of the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.*
16 (Proposition 65).

17 **1.4 General Allegations**

18 Dr. Held alleges that Paramount has manufactured, distributed and/or sold certain inflatable
19 vinyl toys/children's items containing di(2-ethylhexyl)phthalate (hereinafter "DEHP") in the State
20 of California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition
21 65, and is known to cause birth defects and other reproductive harm. DEHP shall be referred to
22 hereinafter as the "listed chemical."

23 **1.5 Product Description**

24 The products that are covered by this consent judgment are defined as follows: inflatable
25 vinyl toys/children's items containing the plasticizer phthalate DEHP, such as the ParaMAXX Arm
26 Band (VD-669894), ParaMAXX Swimming Ring (VD-69891), and ParaMAXX Beach Ball (VD-
27 69897) All such inflatable vinyl toys/children's items containing DEHP are hereinafter referred to
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1 as the "Products."

2 **1.6 Notice of Violation**

3 Dr. Held asserts that on June 5, 2008, he served Paramount and the Office of the California
4 Attorney General of the State of California, all California counties' District Attorneys and all City
5 Attorneys of California cities with populations exceeding 750,000, (collectively, "Public
6 Enforcers") with a document entitled "60-Day Notice of Violation" (the "Notice") that provided
7 Paramount and Public Enforcers with notice of alleged violations of California Health & Safety
8 Code §25249.6 for failing to warn consumers that the Products that Paramount sold allegedly
9 exposed users in California to the listed chemical, while the items were handled or chewed. To the
10 best of parties' knowledge, no Public Enforcer has diligently prosecuted any of the allegations set
11 forth in the Notice.

12 **1.7 Complaint**

13 On August 25, 2008, Dr. Held, who was and is acting in the interest of the general public
14 in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
15 County of San Francisco against J.J. Paramount, Inc.; Paramount Importers and Wholesale; and
16 Does 1 through 150, alleging violations of California Health & Safety Code §25249.6 based on
17 the alleged exposures to Listed Chemical contained in the Products sold by Paramount. On
18 February 25, 2009, Held's request for dismissal, without prejudice, of defendant Paramount
19 Importers and Wholesale was filed by the Court.

20 **1.8 No Admission**

21 Paramount denies the material, factual, and legal allegations contained in Dr. Held's
22 Notice and Complaint and maintains that all Products that they have sold and distributed in
23 California have been and are in compliance with all laws. Nothing in this consent judgment shall
24 be construed as an admission by Paramount of any fact, finding, issue of law, or violation of law,
25 nor shall compliance with this consent judgment constitute or be construed as an admission by
26 Paramount of any fact, finding, conclusion, issue of law, or violation of law, such being
27 specifically denied by Paramount. In order to avoid the costs and expenses of litigation and
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1 without admitting liability or wrongdoing, Paramount has elected to resolve this matter by
2 settlement and on the terms set forth herein. However, this section shall not diminish or
3 otherwise affect Paramount's obligations, responsibilities, and duties 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 Paramount as to the allegations contained in the Complaint, that venue is proper in
7 the County of San Francisco, and that this Court has jurisdiction to enter and enforce this consent
8 judgment as a full and final binding resolution of all claims which were or could have been raised
9 in the Complaint against Paramount based on the facts alleged therein and in the Notice.

10 **1.10 Effective Date**

11 For purposes of this consent judgment, the term "Effective Date" shall mean August 21,
12 2009.

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

14 **2.1 Product Warnings**

15 After the Effective Date, Paramount shall not sell, ship, or offer to be shipped for sale in
16 California any Products containing the listed chemical unless: such Products are sold or shipped
17 with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), or comply with
18 the reformulation standards set forth in Section 2.3.

19 Each warning shall be prominently placed with such conspicuousness as compared with
20 other words, statements, designs, or devices as to render it likely to be read and understood by an
21 ordinary individual under customary conditions before purchase or use. Each warning shall be
22 provided in a manner such that the consumer or user understands to which specific Product the
23 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
24 arise.

25 **(a) Retail Store Sales.**

26 **(i) Product Labeling.** Paramount may perform its warning obligation
27 by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in
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1 retail outlets in the State of California by Paramount or its agents, that states:

2 **CALIFORNIA**
3 **PROPOSITION 65**
4 **WARNING:**

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

5 (ii) **Point-of-Sale Warnings.** Paramount may, alternatively, perform its
6 warning obligations by ensuring that signs are posted at retail outlets in the State of California
7 where the Products are sold. Point-of-sale warnings shall be provided through one or more signs
8 posted in close proximity to the point of display of the Products that states:

9 **CALIFORNIA**
10 **PROPOSITION 65**
11 **WARNING:**

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

12 Where more than one Product is sold in proximity to other like items or to those that do not
13 require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement
14 must be used:

15 **CALIFORNIA**
16 **PROPOSITION 65**
17 **WARNING:**

The following products contain DEHP,
a phthalate chemical known to the State
of California to cause birth defects and
other reproductive harm.

18 [LIST PRODUCTS]

19 (b) **Mail Order Catalog and Internet Sales.** Paramount does not directly sell
20 any products to consumers via mail order catalogs or the Internet, but it does sell to resellers via
21 mail order catalogs or the Internet.

22 Paramount shall satisfy its warning obligations for Products sold via mail order catalog or
23 the Internet to California sellers by providing a warning: (i) in the mail order catalog; or (ii) on the
24 website. Warnings given in the mail order catalog or on the website shall identify the specific
25 Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

26 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
27 order catalog must be in the same type size or larger than the Product description text within the
28 catalog. The following warning shall be provided on the same page and in the same location as the

1 display and/or description of the Product:

2 **CALIFORNIA**
3 **PROPOSITION 65**
4 **WARNING:**

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

5 Where it is impracticable to provide the warning on the same page and in the same location
6 as the display and/or description of the Product, Paramount may utilize a designated symbol to
7 cross reference the applicable warning and shall define the term "designated symbol" with the
8 following language on the inside of the front cover of the catalog or on the same page as any order
9 form for the Product(s):

10 **CALIFORNIA**
11 **PROPOSITION 65**
12 **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.

13 The designated symbol must appear on the same page and in close proximity to the display
14 and/or description of the Product. On each page where the designated symbol appears, Paramount
15 must provide a header or footer directing the reseller to the warning language and definition of the
16 designated symbol.

17 If Paramount elects to provide warnings in the mail order catalog, then the warnings must be
18 included in all catalogs offering to sell one or more Products printed after the date of entry of this
19 consent judgment.

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

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**CALIFORNIA
PROPOSITION 65
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:

**CALIFORNIA
PROPOSITION 65
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: ▼

(c) **Interim Warning Language.** The parties acknowledge, for purposes of all warnings required under Section 2.1 of this consent judgment, that Paramount, upon receiving Dr. Held's Notice, immediately implemented a warning program so as to ensure that all future shipments of the Products to California customers included the requisite health hazard warning. The warning language that Paramount utilized read as follows:

**CALIFORNIA
PROPOSITION 65
WARNING:**

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

Paramount may continue to use this warning until its current supply of warning materials has been exhausted. At that point, Paramount shall use the language provided in Section 2.1(a) and 2.1 (b) above, unless and until the Products have been reformulated as set forth in Section 2.3 below so as to eliminate the need to provide any warning under this consent judgment.

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

2.3 Reformulation Standards

Reformulated Products are defined as those containing less than 1,000 ppm of DEHP, as measured by Environmental Protection Agency ("EPA") testing methodologies 3580A

1 and 8270C.

2 **2.4 Reformulation Commitment**

3 Upon Paramount's receipt of the sixty day notice, Paramount undertook immediate efforts to
4 reformulate the Products so as to eliminate the presence of DEHP. Paramount hereby commits to
5 continue to use its best efforts, to the extent it is economically and physically feasible, to
6 reformulate one hundred percent (100%) of the Products that they offer for sale in California after
7 the effective date, so that the Products shall qualify as Reformulated Products.

8 **3. MONETARY PAYMENTS**

9 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

10 (a) Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall
11 be \$2,000. Civil penalties are to be apportioned in accordance with California Health & Safety
12 Code §25192, with 75% of these funds remitted to the State of California's Office of
13 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty
14 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d).
15 Paramount shall issue two separate checks for each penalty payment: (a) one check made payable
16 to "Hirst & Chanler LLP in Trust For OEHHA" in the amount of \$1,500.00, representing 75% of
17 the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the
18 amount of \$500.00, representing 25% of the total penalty. Two separate 1099s shall be issued for
19 the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486);
20 and (b) Anthony Held, whose information shall be provided five calendar days before the first
21 payment is due.

22 (b) Counsel for Paramount shall collect the penalty payment and hold it in its Trust
23 Account until such time as payment is due to Dr. Held's counsel. Counsel for Paramount shall
24 notify Dr. Held's counsel in writing not later than August 26, 2009, that it is in receipt of such
25 penalty payment.

26 The penalty payment shall be delivered to Dr. Held's counsel on August 31, 2009 at the
27 following address:
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1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street, Suite 214
4 Berkeley, CA 94710

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

5 **4.1 Attorney Fees and Costs.**

6 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
8 this fee issue to be resolved after the material terms of the agreement had been settled. Paramount
9 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
10 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to
11 Dr. Held and his counsel under general contract principles and the private attorney general doctrine
12 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the
13 mutual execution of this agreement. Paramount shall reimburse Dr. Held and his counsel, in three
14 separate payments, for a combined total of \$28,000.00, for fees and costs incurred as a result of
15 investigating, bringing this matter to Paramount's attention, and litigating and negotiating a
16 settlement in the public interest. Counsel for Paramount shall collect the fee and cost payments and
17 hold them in its Trust Account until such time as payment is due to Dr. Held's counsel. Counsel for
18 Paramount shall notify Dr. Held's counsel in writing, not later than three business days after the
19 date the payments are due, that it is in receipt of such fee and cost payments. Fee and cost
20 payments shall be delivered to counsel for Paramount according to the following schedule:

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	Amount of Payment for fees and costs to Counsel for Dr. Held:	Delivery of payment to Counsel for Paramount no later than:
22 First Payment	\$3,000	August 31, 2009
23 Second Payment	\$5,000	September 30, 2009
24 Third Payment	\$5,000	October 31, 2009
25 Fourth Payment	\$5,000	November 30, 2009
Fifth Payment	\$5,000	December 20, 2009
Sixth Payment	\$5,000	January 29, 2010

26 Counsel for Paramount shall deliver the total fee and cost payment of \$28,000 to counsel
27 for Dr. Held no later than February 1, 2010, at the following address:
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1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street, Suite 214
4 Berkeley, CA 94710

5 **5. RELEASE OF ALL CLAIMS**

6 **5.1 Dr. Held's Release of Paramount**

7 In further consideration of the promises and agreements herein contained, and for the
8 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and
9 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
10 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
11 of legal action and releases all claims including, without limitation, all actions, and causes of action,
12 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
13 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
14 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), that
15 were brought or could have been brought against Paramount or its parents, subsidiaries or affiliates,
16 and all of their customers, distributors, wholesalers, retailers, licensors, licensees, or any other
17 person in the course of doing business, and the successors and assigns of any of them, who may use,
18 maintain, manufacture, distribute, advertise, market or sell Products, and the officers, directors,
19 managers, employees, members, shareholders, agents, insurers and representatives of each of them
20 (collectively "Defendant Releasees") in this Action. This release is limited to, but is intended to be
21 a full, final, and binding resolution of, those Claims that arise under Proposition 65, as against
22 Paramount and Defendant Releasees, as such Claims relate to Paramount's alleged failure to warn
23 about exposures to the Listed Chemical contained in inflatable vinyl toys and children's items,
24 specifically children's inflatable vinyl arm rings, inflatable vinyl swim rings, inflatable vinyl toys
25 bath toys, and inflatable vinyl swim toys. Paramount's compliance with this Consent Judgment
26 shall constitute compliance with Proposition 65 for Paramount and its Releasees with respect to the
27 Listed Chemical in such items after the Effective Date.

28 Dr. Held also, in his individual capacity only and *not* in his representative capacity,
provides a general release herein which shall be effective as a full and final accord and

1 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
2 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,
3 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action.
4 Dr. Held acknowledges that he is familiar with Section 1542 of the California Civil Code, which
5 provides as follows:

6 A general release does not extend to claims which the creditor does
7 not know or suspect to exist in his favor at the time of executing the
8 release, which if known by him must have materially affected his
9 settlement with the debtor.

9 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly
10 waives and relinquishes any and all rights and benefits which he may have under, or which may
11 be conferred on her by the provisions of Section 1542 of the California Civil Code as well as
12 under any other state or federal statute or common law principle of similar effect, to the fullest
13 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
14 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
15 complete release notwithstanding the discovery or existence of any such additional or different
16 claims or facts arising out of the released matters.

17 The Parties further understand and agree that this release shall not extend upstream to any
18 entities that manufactured the Products for Paramount or any component parts thereof or to any
19 distributors or suppliers who sold the Products or any component parts thereof to Paramount.

20 **5.2 Effect of Consent Judgment**

21 Compliance with the terms of this consent judgment resolves any issue, now and in the
22 future, concerning compliance by Paramount and Defendant Releasees with the requirements of
23 Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by
24 Paramount.

25 **5.3 Paramount's Release of Dr. Held**

26 Paramount waives any and all claims against Dr. 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 Dr. Held and his attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against them 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 shall
6 be null and void if, for any reason, it is not approved and entered by the Court within one year after
7 it has been fully executed by all parties. If the Court does not approve the consent judgment, the
8 parties shall meet and confer as to (and jointly agree on) whether to modify the language or appeal
9 the ruling. If the parties do not jointly agree on a course of action to take, then the case shall
10 proceed in its normal course on the trial court's calendar. In the event that this consent judgment is
11 entered by the Court and subsequently overturned by any appellate court or the motion to approve is
12 not ultimately granted, any monies that have been provided to Plaintiff, or his counsel pursuant to
13 Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision
14 becoming final. If the Court's approval is ultimately overturned by an appellate court, the parties
15 shall meet and confer as to (and jointly agree on) whether to modify the terms of the consent
16 judgment. If the parties do not jointly agree on a course of action to take, then the case shall
17 proceed in its normal course on the trial court's calendar.

18 **7. SEVERABILITY**

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

22 **8. ENTIRE AGREEMENT**

23 This consent judgment contains the sole and entire agreement and understanding of the
24 parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
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1 to exist or to bind any of the parties.

2 **9. GOVERNING LAW**

3 The terms of this consent judgment shall be governed by the laws of the State of California
4 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
5 rendered inapplicable by reason of state or federal law generally, or as to the Products, then
6 Paramount shall provide written notice to Dr. Held of any asserted change in the law, and shall have
7 no further obligations pursuant to this consent judgment with respect to, and to the extent that, the
8 Products are so affected.

9 **10. NOTICES**

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

14 To Paramount:

15 Thomas H. Clarke,
16 ROPERS, MAJESKI, KOHN & BENTLEY
17 201 Spear Street, #1000
San Francisco, CA 94105

18 To Dr. Held:

19 Proposition 65 Coordinator
20 HIRST & CHANLER, LLP
21 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

24 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

25 This consent judgment may be executed in counterparts and by facsimile, each of which
26 shall be deemed an original, and all of which, when taken together, shall constitute one and the
27 same document.

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AGREED TO:
APPROVED
By Anthony E Held at 7:17 pm, 8/24/09
Date: _____
By: Anthony E Held
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:
Date: _____
By: _____
Defendant, J.J. PARAMOUNT INTERNATIONAL, INC.

APPROVED AS TO FORM:
Date: _____
HIRST & CHANLER LLP
By: _____
Laurence D. Haveson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

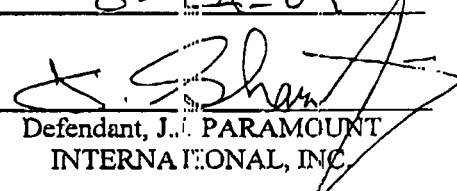
APPROVED AS TO FORM:
Date: _____
ROPERS, MAJESKI, KOHN & BENTLEY
By: _____
Timothy A. Dolan
Attorneys for Defendants
J.J. PARAMOUNT INTERNATIONAL, INC.

IT IS SO ORDERED.
Date: _____

JUDGE OF THE SUPERIOR COURT

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

AGREED TO:
 Date: 8-24-09
 By: 
 Defendant, J.J. PARAMOUNT INTERNATIONAL, INC.

APPROVED AS TO FORM:
 Date: _____
 HIRST & CHANLER LLP
 By: _____
 Laurence D. Haveson
 Attorneys for Plaintiff
 ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:
 Date: _____
 ROPERS, MAJESKI, KOHN & BENTLEY
 By: _____
 Timothy A. Dolan
 Attorneys for Defendants
 J.J. PARAMOUNT INTERNATIONAL, INC.

IT IS SO ORDERED.
 Date: _____

JUDGE OF THE SUPERIOR COURT