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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 ANTHONY E. HELD, Ph.D., P.E.,

13 Plaintiff,

14 v.

15 ALDO U.S., INC., ALDO GROUP, INC, *et al.*,

16 Defendants.

17
18 JOHN MOORE,

19 Plaintiff,

20 v.

21 KATE SPADE, LLC, *et al.*,

22 Defendants.
23
24
25
26
27
28

) Case Nos. CGC-10-497729 and CGC-
) 10-498981 (*Consolidated Herein*)

) **STIPULATION FOR ENTRY OF**
) **CONSENT JUDGMENT**

) Complaints Filed: March 11, 2010 and
) April 23, 2010

1 **1. INTRODUCTION.**

2 **1.1** The parties to this Stipulation for Entry of Consent Judgment (“Consent
3 Judgment”) are plaintiffs, Anthony E. Held, Ph.D., P.E. (“Held”) and John Moore (“Moore”)
4 (collectively, “Plaintiffs”), and the Initial Settling Defendants that are listed on Exhibit A.
5 Additional Opt-In Settling Defendants, as defined in Section 2.8, may be later added to this
6 Consent Judgment through the opt-in procedure set forth in Section 8 below. Initial Settling
7 Defendants and Opt-In Settling Defendants shall be referred to herein as “Settling Defendants.”
8 Settling Defendants and Plaintiffs are the “Parties” to this Consent Judgment.

9 **1.2** Plaintiffs are individuals residing in the State of California who seek to
10 promote awareness of exposure to toxic chemicals and improve human health by reducing or
11 eliminating hazardous substances contained in consumer products. Commencing in late 2009 and
12 continuing through 2010, Plaintiffs served 60-Day Notices of Violation under the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et*
14 *seq.* (“Proposition 65”), alleging that the entities named in those notices violated Proposition 65
15 by exposing persons to di(2-ethylhexyl)phthalate (“DEHP”), a plasticizer contained in certain
16 Fashion Accessories (as further defined in Section 2.5 below), without first providing a clear and
17 reasonable warning regarding the risk of reproductive toxicity of DEHP.

18 **1.3** Each Settling Defendant employs ten or more persons and manufactures,
19 distributes or offers Fashion Accessories for sale in the State of California or has done so in the
20 past. Each Settling Defendant represents that, as of the date it executes this Consent Judgment,
21 no public enforcer is diligently prosecuting an action related to DEHP in its Fashion Accessories.

22 **1.4** On March 11, 2010, Held filed the action entitled *Held v. Aldo U.S., Inc. and*
23 *Aldo Group, Inc., et al.*, Case No. CGC-10-497729, in the Superior Court of California for the
24 City and County of San Francisco, alleging Proposition 65 violations as to certain Fashion
25 Accessories. On April 23, 2010, Moore filed the action entitled *Moore v. Kate Spade, LLC., et*
26 *al.*, Case No. CGC-10-498981, in the Superior Court of California for the City and County of San
27 Francisco, alleging Proposition 65 violations as to certain Fashion Accessories. On or about
28 August 23, 2010, Held filed a First Amended Complaint in Case No. CGC-10-497729, naming

1 several of the Settling Defendants as defendants therein with respect to DEHP in Fashion
2 Accessories they sold or offered for sale in California. Collectively, the *Moore v. Kate Spade*
3 complaint and the *Held v. Aldo* complaint are referred to herein as the “Actions”. Upon approval
4 and entry of this Consent Judgment by the Court, Case Numbers CGC-10-497729 and CGC-10-
5 498981 shall be deemed to have been consolidated by the Court for pre-trial purposes on its own
6 motion and any judgment entered based on the Consent Judgment shall be filed in both Actions.

7 **1.5** The Parties intend for this Consent Judgment to set an industry-wide DEHP
8 Standard (as defined in Section 2.3 below) in Accessible Components (as defined in Section 2.1
9 below) of Fashion Accessories that manufacturers, importers, distributors, and retailers will
10 implement following the time schedule set forth herein, and which will obviate the need for
11 Proposition 65 warnings with regard to such Fashion Accessories.

12 **1.6** For purposes of this Consent Judgment only, the Parties stipulate that this
13 Court has subject matter jurisdiction over the allegations contained in the operative complaints
14 applicable to each Settling Defendant (collectively the “Complaint”) and personal jurisdiction
15 over each Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the
16 City and County of San Francisco, and that this Court has jurisdiction to enter and oversee this
17 Consent Judgment pursuant to California Code of Civil Procedure § 664.6.

18 **1.7** Nothing in this Consent Judgment is or shall be construed as an admission by
19 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
20 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
21 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
22 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
23 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and
24 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in
25 these Actions.

1 **2. DEFINITIONS.**

2 **2.1** “Accessible Component” means a poly vinyl chloride or other soft plastic,
3 vinyl, or synthetic leather component of a Covered Product that could be touched by a person
4 during reasonably foreseeable use.

5 **2.2** “Covered Products” means Fashion Accessories that are: (a) Manufactured (as
6 defined in Section 2.7 below) by a Settling Defendant; or (b) distributed or otherwise transferred
7 to a third party by a Settling Defendant; or (c) sold or offered for retail sale, including internet
8 and/or catalogue sales, as a Private Label Covered Product by a Settling Defendant that is (i) the
9 Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity within the same corporate
10 family that is under common ownership of the Private Labeler of such product.

11 **2.3** “DEHP Standard” means a maximum concentration of DEHP by weight of
12 1,000 parts per million (“ppm”) or less, in each Accessible Component.

13 **2.4** “Effective Date” means: (i) as to the Initial Settling Defendants listed on
14 Exhibit A, the date on which a judgment based on this Consent Judgment is entered by the Court;
15 and (ii) as to Opt-In Settling Defendants, the date on which this Consent Judgment is made
16 effective as to the Opt-In Settling Defendant by the Court.

17 **2.5** “Fashion Accessories” means: (i) wallets and other coin or bill holders; (ii)
18 handbags, purses, clutches, and totes; (iii) belts; (iv) footwear; (v) apparel, including gloves and
19 headwear (and excluding sauna suits); (vi) jewelry; (vii) key holders, keychains, and key caps;
20 (viii) luggage tags and ID cases; (ix) bag charms and zipper pulls; (x) eyeglass cases; (xi)
21 coverings/cases for mobile electronic devices (e.g., for telephones, cameras, MP3 players,
22 CDs/DVDs, and laptops); (xii) coverings for journal/address books; (xiii) cosmetic cases/bags;
23 and (xiv) toiletry cases/bags. Specifically excluded from the definition of Fashion Accessories
24 are any and all products that are primarily intended for use by persons ages twelve and younger.
25 The terms of this Consent Judgment apply to each Settling Defendant only as to those
26 “categories” of Fashion Accessories in subsections (i)-(xiv) above which are designated for that
27 Settling Defendant on Exhibit A.
28

1 **2.6** “Initial Settling Defendants” means the defendants that have executed this
2 Consent Judgment on or before September 10, 2010. Parents, subsidiaries, and affiliated entities
3 that are under common ownership with an Initial Settling Defendant will be deemed to be
4 included as Initial Settling Defendants under this Consent Judgment to the extent they are
5 specifically denominated with the listing of the Initial Settling Defendant’s name on Exhibit A.

6 **2.7** “Manufactured” and “Manufactures” have the meaning defined in Section
7 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended
8 from time to time.¹

9 **2.8** “Opt-In Settling Defendants” means the defendants that joined into this
10 Consent Judgment pursuant to the procedure established in Section 8 below.

11 **2.9** “Private Label Covered Product” means a Fashion Accessory that bears a
12 private label where (i) the product (or its container) is labeled with the brand or trademark of a
13 entity other than a manufacturer of the product, (ii) the entity with whose brand or trademark the
14 product (or container) is labeled has authorized or caused the product to be so labeled, and (iii)
15 the brand or trademark of a manufacturer of such product does not appear on such label.

16 **2.10** “Private Labeler” means an owner or licensee of a brand or trademark on the
17 label or other packaging of a product which bears a private label; provided, however, that a
18 Settling Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark
19 is visible on a sign or on the price tag of a Fashion Accessory that is not labeled with a third
20 party’s brand or trademark.

21 **2.11** “Vendor” means a person or entity that Manufactures, imports, distributes, or
22 otherwise supplies a Fashion Accessory to a Settling Defendant, and that is not itself a Settling
23 Defendant.

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28 ¹ As of August 23, 2010, the term “Manufactured” and “Manufactures” means to
manufacture, produce, or assemble.

1 **3. INJUNCTIVE RELIEF - REFORMULATION**

2 **3.1 DEHP Specification Compliance Date.** No more than 30 days after the
3 Effective Date, each Settling Defendant shall have provided the DEHP Standard to its then-
4 current Vendors of Fashion Accessories that will be sold or offered for sale to California citizens
5 and shall instruct each Vendor to use reasonable efforts to provide Fashion Accessories that
6 comply with the DEHP Standard expeditiously. In addressing the obligation set forth in the
7 preceding sentence, Settling Defendants shall not employ statements that will encourage a Vendor
8 to delay compliance with the DEHP Standard.

9 **3.2 Implementation of the DEHP Standard for Covered Products.**

10 **3.2.1** Commencing on December 15, 2011, a Settling Defendant shall not
11 purchase, import, Manufacture, or supply to an unaffiliated third party any Covered Product that
12 will be sold or offered for sale to California citizens that exceeds the DEHP Standard.

13 **3.2.2** The deadline for meeting the DEHP Standard imposed pursuant to
14 Section 3.2.1 above shall be extended to December 15, 2012, with respect to a Settling Defendant
15 if the Settling Defendant requiring such an extension, provides a written notification to Plaintiffs
16 and files a notice in this Court exercising such an election, on or before November 15, 2011.
17 Such a Settling Defendant shall pay the additional penalty and reimbursement of Plaintiffs'
18 attorneys' fees and costs associated with the exercise of such an election as more specifically set
19 forth in Sections 5.1.1(d) and 5.1.1(e) below.

20 **3.2.3** The deadline for meeting the DEHP Standard may be extended a second
21 time to December 15, 2013, with respect to its application to Fashion Accessories that are
22 footwear if the Settling Defendant requiring such a further extension provides additional written
23 notification to Plaintiffs and files further notice in this Court exercising such an option on or
24 before November 15, 2012. Such a Settling Defendant shall pay the additional penalty and
25 reimbursement of Plaintiffs' attorneys' fees and costs associated with the exercise of this option
26 as more specifically set forth in Section 5.1.1(e) and 5.1.2(d) below.

1 **4. ENFORCEMENT**

2 **4.1** Any Party may, by motion or application for an order to show cause before
3 this Court, enforce the terms and conditions contained in this Consent Judgment.

4 **4.2** Within 30 days after the Effective Date, each Settling Defendant shall notify
5 Plaintiffs of a means sufficient to allow Plaintiffs to identify Covered Products supplied or
6 offered by that Settling Defendant on or after that date, for example, a unique brand name or
7 characteristic system of product numbering or labeling. Information provided to Plaintiffs
8 pursuant to this Section 4.2, including but not limited to, the identities of parties to contracts
9 among Settling Defendants or between Settling Defendants and third parties, may be designated
10 by the Settling Defendant as competitively sensitive confidential business information and, if so
11 designated, shall not be disclosed to any person, including but not limited to, any Settling
12 Defendant, without the written permission of the Settling Defendant who provided the
13 information. Any motions or pleadings or any other court filings that may reveal information
14 designated as competitively sensitive confidential business information pursuant to this Section
15 shall be submitted in accordance with California Rules of Court 8.160 and 2.550, *et seq.*

16 **5. PAYMENTS**

17 **5.1 Payments.**

18 **5.1.1 Payments by Initial Settling Defendants.** Except as provided for in
19 subsection 5.1.1(c) below, each Initial Settling Defendant as identified on Exhibit A shall pay a
20 base settlement amount totaling \$43,000 within ten (10) business days after the Effective Date.
21 Settlement payments shall be made and delivered as set forth in subsection 5.1.2(f).

22 The base amount shall be allocated as follows:

23 (a) \$10,000 shall be for a civil penalty pursuant to Health and
24 Safety Code Section 25249.7(b).²

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27 ² All statutory civil penalties shall be allocated, as follows: 25% shall be paid to Plaintiffs and the remaining 75%
28 shall be paid to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA"). The civil
penalties recovered by Plaintiffs shall be apportioned with 85% (of the 25%) going to Held and 15% (of the 25%)
going to Moore. This division shall apply to all civil penalties recovered under this Consent Judgment.

1 (b) \$33,000 shall be for reimbursement of a portion of Plaintiffs'
2 attorneys' fees and costs.

3 (c) If a Settling Defendant has identified itself in Exhibit A to this
4 Consent Judgment with respect to only one category of the Fashion Accessories listed
5 in Section 2.5 (i)-(xiv) above, and has previously received a 60-Day Notice of
6 Violation for DEHP in a Covered Product with respect to that category of Fashion
7 Accessory, in lieu of the base amount specified in Section 5.1.1 above, it may pay a
8 reduced base settlement amount of \$33,000; \$5,000 of which shall be for a civil
9 penalty pursuant to Health and Safety Code Section 25249.7(b) and \$28,000 of which
10 shall be for reimbursement of a portion of Plaintiffs' attorneys' fees and costs.

11 (d) Each Initial Settling Defendant that invokes its election under
12 Section 3.2.2 shall, in addition to the amount set forth in Section 5.1.1, pay, at the
13 time it provides notification of such an election, an additional \$12,000; \$8,000 of
14 which shall be for a civil penalty pursuant to Health and Safety Code Section
15 25249.7(b), \$1,000 of which shall be for reimbursement of a portion of Plaintiffs'
16 attorneys' fees and costs associated with Plaintiffs' oversight and recordkeeping in
17 association with the exercise of such an election, and an additional \$3,000 of which
18 may be awarded by the Court to Plaintiffs' counsel as reimbursement for Plaintiffs'
19 attorneys fees and costs, if justified, with any balance of the remaining \$3,000 not so
20 awarded by the Court reverting to civil penalties.

21 (e) Each Initial Settling Defendant that invokes the further option
22 provided under Section 3.2.3 above shall, in addition to the combined amounts set
23 forth in Section 5.1.1 and 5.1.1(d), pay, at the time it provides notification of such an
24 election, an additional \$26,000; \$20,000 of which shall be for a civil penalty pursuant
25 to Health and Safety Code Section 25249.7(b), \$1,000 of which shall be for
26 reimbursement of a portion of Plaintiffs' attorneys' fees and costs associated with
27 Plaintiffs' oversight and recordkeeping in association with the exercise of such an
28 election, and an additional \$5,000 of which may be awarded by the Court to

1 Plaintiffs' counsel as reimbursement for Plaintiffs' attorneys fees and costs, if
2 justified, with any balance of the remaining \$5,000 not so awarded by the Court
3 reverting to civil penalties.

4 **5.1.2 Payments by Opt-In Settling Defendants.**

5 (a) **Opt-In Settling Defendants That Have Received a 60 Day**
6 **Notice of Violation.** Each Opt-In Settling Defendant that has received a 60 Day
7 Notice of Violation for DEHP in a Covered Product, from either Plaintiff, shall, in
8 conjunction with its exercise of Section 8 below, pay a base settlement amount of
9 \$46,000; \$12,000 shall be for a civil penalty pursuant to Health and Safety Code
10 Section 25249.7(b) and \$34,000 shall be for reimbursement of a portion of Plaintiffs'
11 attorneys' fees and costs.

12 (b) **Opt-In Settling Defendants That Have Received a 60 Day**
13 **Notice of Violation and Wish to Opt-In for Only One Category of Fashion**
14 **Accessory.** If an Opt-In Settling Defendant, in conjunction with its exercise of
15 Section 8 below, elects to opt into the Consent Judgment with respect to only one
16 category of the Fashion Accessories listed in Section 2.5 (i)-(xiv) above, and has
17 previously received a 60-Day Notice of Violation for DEHP in a Covered Product
18 with respect to that category of Fashion Accessory, in lieu of the amounts specified in
19 Section 5.1.2(a) above, it may pay a reduced base settlement amount of \$36,000;
20 \$8,000 shall be for a civil penalty pursuant to Health and Safety Code Section
21 25249.7(b) and \$28,000 shall be for reimbursement of a portion of Plaintiffs'
22 attorneys' fees and costs.

23 (c) **Opt-In Settling Defendants That Have Not Received a 60**
24 **Day Notice of Violation.** Each Opt-In Settling Defendant that has not received a 60
25 Day Notice of Violation for DEHP in a Covered Product, shall, in conjunction with
26 its exercise of Section 8 below and regardless of the number of categories of Fashion
27 Accessories designated by said Opt-In Settling Defendant pay the applicable
28 settlement amount, as follows: (i) \$28,000 for each Opt-In Settling Defendant that

1 executes a “Stipulation For Entry of Judgment” (“Opt-In Stipulation”) on or before
2 December 15, 2010, of which \$8,000 shall be for a civil penalty pursuant to Health
3 and Safety Code Section 25249.7(b) and \$20,000 shall be for reimbursement of a
4 portion of Plaintiffs’ attorneys’ fees and costs; and (ii) \$36,000 for each Opt-In
5 Settling Defendant that has not received a 60 Day Notice of Violation for DEHP in a
6 Covered Product that executes a Opt-In Stipulation after December 15, 2010, of
7 which \$12,000 shall be for a civil penalty pursuant to Health and Safety Code Section
8 25249.7(b) and \$24,000 shall be for reimbursement of a portion of Plaintiffs’
9 attorneys’ fees and costs.

10 (d) In addition to payments required above, any Opt-In Settling
11 Defendant subject to an existing complaint concerning the presence of DEHP in a
12 Covered Product that has been filed prior to the date upon which said Opt-In Settling
13 Defendant exercises its option under Section 8 below, shall pay a supplemental
14 charge of \$20,000 to cover fees and expenses incurred by Plaintiffs for activities
15 associated with the original filing of said existing complaint, on-going litigation,
16 and/or activities associated with the subsequent dismissal of said complaint without
17 prejudice.

18 (e) Each Opt-In Settling Defendant shall, subsequent to their
19 addition as a Party to this Consent Judgment, also have the right to exercise the
20 election and options set forth in Sections 3.2.2 and 3.2.3 above based on the same
21 payment terms set forth for the Initial Settling Defendants in Section 5.1.1(d) and
22 5.1.1(e) above.

23 (f) All settlement payments required by this Consent Judgment
24 shall be paid by means of a check made payable to The Chanler Group Attorney-
25 Client Trust Fund. The funds for Opt-In Settling Defendants shall be paid at the time
26 they submit their Opt-In Stipulation pursuant to Section 8 below. All settlement
27 payments required by this Consent Judgment shall be sent to the following address:
28

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 Re: DEHP in Fashion Accessories Matter
4 Parker Plaza
5 2560 Ninth Street, Suite 214
6 Berkeley, CA 94710

7 **6. CLAIMS COVERED AND RELEASED**

8 **6.1** This Consent Judgment is a full, final and binding resolution between
9 Plaintiffs on behalf of themselves and the public interest and each Settling Defendant, and their
10 parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
11 employees, and attorneys (“Defendant Releasees”), and each entity to whom they directly or
12 indirectly distribute or sell Covered Products, including but not limited to distributors,
13 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees
14 (“Downstream Defendant Releasees”) of any violation of Proposition 65 that was or could have
15 been asserted in the Complaint against Settling Defendants, Defendant Releasees, and
16 Downstream Defendant Releasees, based on failure to warn about alleged exposure to DEHP
17 contained in Fashion Accessories that were sold by a Settling Defendant prior to the Effective
18 Date but only as to those categories of Fashion Accessories in Section 2.5 (i)-(xiv) above that are
19 Covered Products and designated, for each Initial Settling Defendant on Exhibit A, and for each
20 Opt-In Defendant in its respective Stipulation for Entry of Judgment pursuant to Section 8.2
21 below.

22 **6.2** In further consideration of the promises and agreements herein contained, the
23 injunctive relief commitments set forth in Section 3, and for the payments to be made pursuant to
24 Sections 4 and 5, Plaintiffs on behalf of themselves, their past and current agents, representatives,
25 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waive all
26 rights to institute or participate in, directly or indirectly, any form of legal action and release all
27 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
28 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
whether known or unknown, fixed or contingent (collectively “claims”), against Settling

1 Defendants and each of their Defendant Releasees. This release is limited to those claims that
2 arise under Proposition 65 with respect to DEHP in the Covered Products, as such claims relate to
3 the alleged failure to warn under Health & Safety Code §25249.6 and to only those categories of
4 Fashion Accessories in Section 2.5 (i)-(xiv) above that are Covered Products and designated, for
5 each Initial Settling Defendant on Exhibit A, and for each Opt-In Defendant, in its respective
6 Stipulation for Entry of Judgment pursuant to Section 8.2 below.

7 **6.3** Settling Defendants waive any and all claims against Plaintiffs, their
8 attorneys, and other representatives for any and all actions taken or statements made (or those that
9 could have been taken or made) by Plaintiffs and their attorneys and other representatives,
10 whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65
11 against them in this matter, and/or with respect to the Covered Products.

12 **6.4** Compliance with the terms of this Consent Judgment by a Settling Defendant
13 constitutes compliance with Proposition 65 with respect to DEHP in that Settling Defendant's
14 Covered Products.

15 **6.5** Nothing in this Section 6 affects Plaintiffs' rights to commence or prosecute
16 an action under Proposition 65 against any person other than a Settling Defendant, Defendant
17 Releasee, or Downstream Defendant Releasee.

18 **6.6** Nothing in this Section 6 affects Plaintiffs' rights to commence or prosecute
19 an action under Proposition 65 against a Downstream Defendant Releasee that does not involve a
20 Settling Defendant's Covered Product.

21 **7. NOTICE**

22 **7.1** When any Party is entitled to receive any notice under this Consent Judgment,
23 the notice shall be sent by certified mail and electronic mail to the person identified in Exhibit B.

24 Notices to Plaintiffs shall be addressed to:

25 The Chanler Group
26 Attn: Proposition 65 Coordinator
27 Parker Plaza
28 2560 Ninth Street, Suite 214
Berkeley, CA 94710

1 Any Party may modify the person and address to whom the notice is to be sent by sending
2 each other Party notice by certified mail and/or other verifiable form of written communication.

3 **8. OPT-IN PROGRAM**

4 **8.1** This Consent Judgment is executed with the understanding that additional
5 persons and entities who manufacture, distribute, sell, or offer for sale Fashion Accessories not
6 primarily intended for use by persons ages twelve and younger, in the State of California or has
7 done so in the past and who are not Initial Settling Defendants under this Consent Judgment may
8 wish to subscribe to its terms. All Opt-In Defendants that have not already received a 60 Day
9 Notice of Violation from the Plaintiff(s) concerning the type of Fashion Accessories they wish to
10 address through the Opt-In must be able to certify that they have: (1) employed ten or more
11 persons at any time within the Relevant Period;³ (2) manufactured, imported, distributed, or
12 offered for use or sale one or more such Covered Products that, during the Relevant Period,
13 contain or contained the DEHP; and (3) sold and/or offered for use some such Covered Products
14 in the State of California during the Relevant Period without “clear and reasonable” Proposition
15 65 warnings as that term is defined under 27 California Code of Regulations (“CCR”) §25601.
16 At any time, on or before January 31, 2011, prospective Opt-In Defendants who are willing to
17 confirm these representations may become Settling Defendants hereunder by means of executing
18 the Stipulation for Entry of Judgment as provided in subsection 8.2 below and making the
19 payment required of them under Section 5.1.2 above.

20 **8.2** Each Opt-In Defendant shall execute a “Stipulation for Entry of Judgment” in
21 the general form appearing in Exhibit C hereto (“Opt-In Stipulation”) identifying whether the
22 Opt-In Defendant has manufactured, imported, distributed or offered for use or sale in California
23 Covered Products and certifying to the following facts: (1) the Opt-In Defendant has employed
24 ten or more persons at any time within the Relevant Period; (2) the Opt-In Defendant
25 manufactured, imported, distributed or offered for use or sale in California one or more
26 specifically identified categories of Fashion Accessories in Section 2.5 (i)-(xiv) above that are

27 ³ “Relevant Period” is defined for purposes of this Consent Judgment as the three (3) year period prior to the
28 execution of the Opt-In Stipulation described in section 8.2.

1 Covered Products without a “clear and reasonable” Proposition 65 warning during the Relevant
2 Period, (3) the Opt-In Defendant knows or has reason to believe that one or more Covered
3 Products contained, during the Relevant Period, Accessible Components comprised of more than
4 1,000 parts per million of DEHP; and (4) the Opt-In Defendant has not performed and shared
5 with Plaintiffs a risk or exposure assessment establishing that the Covered Products it offered for
6 sale in California during the Relevant Period did not require Proposition 65 warnings with respect
7 to DEHP. Each Opt-In Defendant shall cooperate with Plaintiffs in providing additional
8 information or representations necessary to enable Plaintiffs to issue a 60-day notice and
9 Certificate of Merit concerning DEHP in the Covered Products (“Notice”).

10 **8.3** Not later than ninety (90) days after Plaintiffs receive a completed Opt-In
11 Stipulation, any additional information or representations necessary to support a Notice, and the
12 payment required pursuant to Section 5.1.2 above, Plaintiffs shall send a Notice pursuant to
13 California Health & Safety Code §25249.7(d) to the Opt-In Defendant, to the Office of the
14 California Attorney General, to every California district attorney, and to every California city
15 attorney required to receive such a notice pursuant to Health & Safety Code §25249.7.

16 **8.4** No earlier than seventy (70) days from the date specified in a Notice sent to an
17 Opt-In Defendant and provided that no authorized public prosecutor of Proposition 65 has filed a
18 lawsuit against that Opt-In Defendant with respect to DEHP in the Covered Products, Plaintiffs
19 shall file in this Court an application for entry of any executed Opt-In Stipulation Plaintiffs have
20 received pursuant to the above and shall serve notice thereof on all Initial Settling Defendants via
21 email. Such application must be filed with the Court by September 15, 2011, at the latest unless
22 the Court provides leave authorizing a later date. If the Court approves the application for entry
23 of the Opt-In Stipulations, the Complaint shall be deemed to have been amended to specifically
24 name the Opt-In Defendants that executed the Opt-In Stipulations as named defendants in this
25 Action and each such Opt-In Defendant shall be deemed to have become a full Settling Defendant
26 under this Consent Judgment and will likewise assume all applicable obligations and rights set
27 forth under this Consent Judgment. In the event that an authorized public prosecutor of
28 Proposition 65 files a lawsuit against an Opt-In Defendant with respect to DEHP in the Covered

1 Products prior to running of the sixty (60) day period established by a Notice issued by Plaintiffs
2 pursuant to Section 8.3 above, Plaintiffs shall refund the full payment submitted to them by such
3 an Opt-In Defendant and then have no further obligations to that Opt-In Defendant under this
4 Section 8.

5 **8.5** At the time Plaintiffs file the application for entry of the Opt-in Stipulations
6 with the Court pursuant to Section 8.4 above, they shall prepare and file with the Court and serve
7 on the Office of the California Attorney General, an application for approval of the attorneys'
8 fees and cost reimbursement payments collected in conjunction with such Opt-In Stipulations
9 pursuant to Section 5.1.2 above. The application shall be supported by one or more declarations
10 reporting the results of the Opt-In program provided for in this Section 8, including all expenses
11 and attorneys fees incurred by Plaintiffs' counsel with respect to the Opt-In Defendants and the
12 Opt-In program relative to the attorneys' fee and cost reimbursement provided by Section 5.1.2
13 above. In the event that the application indicates that total amount of expenses and attorneys fees
14 incurred by Plaintiffs' counsel with respect to the Opt-In program is less than the total amount of
15 reimbursement provided pursuant to Section 5.1.2 above, the application shall provide that, upon
16 approval of the application by the Court, Plaintiffs' counsel shall, within thirty (30) days,
17 disgorge the difference to the State of California's Office of Environmental Health Hazard
18 Assessment ("OEHHA"). Notwithstanding the foregoing, Plaintiffs' counsel may offset any
19 amount that would otherwise be disgorged pursuant to this Section with those attorneys fees and
20 costs incurred with respect to their investigation, litigation and enforcement of this entire matter
21 that exceed the payments made by the Settling Defendants.

22 **9. ADDITIONAL ENFORCEMENT FOR NONCONFORMING NON-COVERED**
23 **PRODUCTS.**

24 **9.1** If, on or after July 1, 2010, Plaintiffs allege that a Settling Defendant offered
25 for retail sale to California consumers, or to a distributor for the purpose of retail sales in
26 California, a product not primarily intended for use by persons ages twelve and younger that is
27 not a Covered Product for an Initial Settling Defendant as specified on Exhibit A or for an Opt-In
28 Defendant as specified on its Stipulation for Entry of Judgment pursuant to Section 8.2 above,

1 does not fall within the product categories of (i) sauna suits, (ii) exercise mats or exercise balls,
2 (iii) window coverings or curtains, or (iv) vinyl flooring, and that contains DEHP in an amount
3 that exceeds the DEHP Standard (“Nonconforming Non-Covered Product”), then prior to
4 Plaintiffs serving a 60-Day Notice under Proposition 65 on such Settling Defendant, Plaintiffs
5 shall provide a letter to the Settling Defendant and the Parties shall then proceed pursuant to this
6 Section 9. The letter shall contain the following information: (a) the date the alleged violation
7 was observed and the product was purchased, including a copy of the sales receipt; (b) the
8 location or website at which the product was offered for sale; (c) a description of the product,
9 including a picture thereof and a picture of identifying information appearing on the tag or label;
10 and (d) data obtained by Plaintiffs regarding the product such as laboratory results associated with
11 the testing of the product.

12 **9.2 Notice of Election.** Within 30 days of receiving a letter pursuant to Section
13 9.1, the Settling Defendant shall serve a Notice of Election on Plaintiffs. The Notice of Election
14 shall:

15 **9.2.1** Identify to Plaintiffs (by proper name, address of principal place of
16 business and telephone number) the person or entity that sold the Nonconforming Non-
17 Covered Product to the Settling Defendant;

18 **9.2.2** Identify the manufacturer and other distributors in the chain of
19 distribution of the Nonconforming Non-Covered Product, provided that such
20 information is reasonably available to the Settling Defendant; and

21 **9.2.3** Include either: (i) a statement that the Settling Defendant elects not to
22 proceed under this Section 9, in which case Plaintiffs may take further action including
23 issuance of a 60-Day Notice under Proposition 65; (ii) a statement that the Settling
24 Defendant elects to proceed under this Section 9, or (iii) a statement that the Settling
25 Defendant contends that the Nonconforming Non-Covered Product is released from
26 liability by a Qualified Settlement under Section 9.4.1 along with a copy of such
27 Qualified Settlement.
28

1 **9.3** A party's disclosure pursuant to this Section 9 of any (i) test reports, (ii)
2 confidential business information, or (iii) other information that may be subject to a claim of
3 privilege or confidentiality, shall not constitute a waiver of any such claim of privilege or
4 confidentiality, provided that the Party disclosing such information shall clearly designate it as
5 confidential. Any Party receiving information designated as confidential pursuant to this Section
6 9 shall not disclose such information to any unrelated person or entity, and shall use such
7 information solely for purposes of resolving any disputes under this Consent Judgment.

8 **9.4** No further action is required of the Settling Defendant under this Consent
9 Judgment, and Plaintiffs shall not serve a 60-Day Notice on the Settling Defendant regarding the
10 Nonconforming Non-Covered Product, if either:

11 **9.4.1** The Nonconforming Non-Covered Product is otherwise released from
12 liability for alleged violations of Proposition 65 with respect to DEHP in the
13 Nonconforming Non-Covered Product by the terms of a separate settlement agreement
14 or consent judgment entered into under Health and Safety Code Section 25249.7 and, if
15 an authorized public prosecutor of Proposition 65 is not a party, reported to the
16 California Attorney General's Office ("Qualified Settlement"); or

17 **9.4.2** At least one of the person(s) identified by the Settling Defendant
18 pursuant to Sections 9.2.1 or 9.2.2 is a person in the course of doing business as defined
19 in Health & Safety Code § 25249.11(b) and (ii) has a principal place of business located
20 within the United States.

21 **9.5** If the Settling Defendant elects not to proceed under Section 9, then neither
22 the Settling Defendant nor Plaintiffs have any further duty under this Section 9 and either may
23 pursue any available remedies under Proposition 65 or otherwise.

24 **9.6** If the Settling Defendant elects to proceed under this Section 9 and is not
25 relieved of liability under Section 9.4., the Settling Defendant shall within sixty (60) days: (i)
26 terminate its further distribution for sale of the Nonconforming Non-Covered Product in
27 California (unless it is reformulated to meet the DEHP Standard within that time), (ii) pay a
28 statutory penalty in the amount of \$4,000 pursuant to Health and Safety Code Section 25249.7(b),

1 and (iii) pay \$25,800 in reimbursement of a portion of attorneys' fees and costs incurred by
2 Plaintiffs with respect to the notice.

3 **9.7** If a Settling Defendant makes payments pursuant to Section 9.6 and at a later
4 date Plaintiffs resolve the alleged violation with the direct or indirect Vendor, identified in
5 Sections 9.2.1 or 9.2.2, of the Nonconforming Non-Covered Product, Plaintiffs shall notify the
6 Settling Defendant and the Settling Defendant shall be entitled to a refund of the lesser amount of
7 its contribution or the settlement amount paid by such Vendor. If the settlement or consent
8 judgment between Plaintiffs and the direct or indirect Vendor of the Nonconforming Non-
9 Covered Product does not provide for the refund to be paid directly by the Vendor to the Settling
10 Defendant, then Plaintiffs shall pay the refund to the Settling Defendant within 15 days of
11 receiving the Vendor's settlement payment.

12 **9.8** Nothing in this Section 9 affects Plaintiffs' rights to issue a 60-Day Notice
13 under Proposition 65 against any entity other than a Settling Defendant, except as to a Settling
14 Defendant's customer of a Nonconforming Non-Covered Product that is subject to the Settling
15 Defendant's election under Section 9.2.3(i) above.

16 **10. COURT APPROVAL**

17 **10.1** This Consent Judgment shall become effective upon entry by the Court.
18 Plaintiffs shall prepare and file a Motion for Approval of this Consent Judgment and Settling
19 Defendants shall support entry of this Consent Judgment.

20 **10.2** If this Consent Judgment is not entered by the Court, it shall be of no force or
21 effect and shall never be introduced into evidence or otherwise used in any proceeding for any
22 purpose other than to allow the Court to determine if there was a material breach of Section 10.1.

23 **11. ATTORNEYS' FEES**

24 **11.1** Except as otherwise provided in this Consent Judgment, each Party shall bear
25 its own attorneys' fees and costs.

26 **12. OTHER TERMS**

27 **12.1** The terms of this Consent Judgment shall be governed by the laws of the State
28 of California.

1 **12.2** This Consent Judgment shall apply to and be binding upon Plaintiffs and
2 Settling Defendants, and their respective divisions, subdivisions, and subsidiaries, and the
3 successors or assigns of any of them.

4 **12.3** This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter set forth in this Consent
6 Judgment, and any and all prior discussions, negotiations, commitments, or understandings
7 related thereto, if any, are deemed merged. There are no warranties, representations, or other
8 agreements between the Parties except as expressly set forth in this Consent Judgment. No
9 representations, oral or otherwise, express or implied, other than those specifically referred to in
10 this Consent Judgment have been made by any Party. No other agreements not specifically
11 contained or referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or
12 to bind any of the Parties. No supplementation, modification, waiver, or termination of this
13 Consent Judgment shall be binding unless executed in writing by the Party to be bound. No
14 waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a
15 waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a
16 continuing waiver.

17 **12.4** Nothing in this Consent Judgment shall release, or in any way affect any
18 rights that any Settling Defendant might have against any other party, whether or not that party is
19 a Settling Defendant.

20 **12.5** The stipulations to this Consent Judgment may be executed in counterparts
21 and by means of facsimile or portable document format (.pdf), which taken together shall be
22 deemed to constitute one document.

23 **12.6** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
25 and execute the Consent Judgment on behalf of the Party represented and to legally bind that
26 Party.

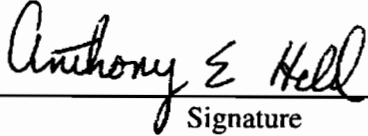
27 **12.7** The Parties, including their counsel, have participated in the preparation of
28 this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
6 be resolved against the drafting Party should not be employed in the interpretation of this Consent
7 Judgment and, in this regard, the Parties hereby waive California Civil Code Section 1654.

8 **IT IS SO STIPULATED:**

9 **AGREED TO:**

10 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

11 
12 _____
Signature

13 Date:

APPROVED
By Tony Held at 10:49 am, Aug 20, 2010

9 **AGREED TO:**

10 Plaintiff, JOHN MOORE

11 _____
Signature

12 Date: _____

13 **AGREED TO:**

14 Defendant, _____
15 Entity

16 _____
Signature

17 By: _____
18 Print Name

19 Its: _____
20 Title

21 Date: _____
22

1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
6 be resolved against the drafting Party should not be employed in the interpretation of this Consent
7 Judgment and, in this regard, the Parties hereby waive California Civil Code Section 1654.

8 **IT IS SO STIPULATED:**

9 **AGREED TO:**
10 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.
11
12 _____
13 Signature

AGREED TO:
10 Plaintiff, JOHN MOORE
11
12 _____
13 Signature

14 Date: _____

Date: 8/20/10

16 **AGREED TO:**
17 Defendant, _____
18 Entity
19
20 _____
21 Signature
22 By: _____
23 Print Name
24 Its: _____
25 Title
26 Date: _____

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1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to
6 be resolved against the drafting Party should not be employed in the interpretation of this Consent
7 Judgment and, in this regard, the Parties hereby waive California Civil Code Section 1654.

8 **IT IS SO STIPULATED:**

9 **AGREED TO:**

10 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Plaintiff, JOHN MOORE

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12
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14

Signature
Date: _____

Signature
Date: _____

15
16 **AGREED TO:**

17 Defendant, HELEN OF TROY LP, BY HELEN OF TROY NEVADA CORPORATION
18 Entity (GENERAL PARTNER)

19 
20 _____
Signature

21 By: GERALD J. RUBIN
22 Print Name

23 Its: PRESIDENT, CEO & CHAIRMAN
24 Title

25 Date: 08/25/2010
26
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EXHIBIT A

Categories Of Fashion Accessories Applicable To Each Initial Settling Defendant

1 Exhibit A

2
3 **Name of Settling Defendant** (and relevant associated entities under common ownership):

4 **Helen of Troy L.P.**

5 **Belson Products (assumed name)**

6 **Pro Beauty Tools (assumed name)**

7 **Fusion Tools (assumed name)**

8
9
10 **Fashion Accessories Categories Applicable to Above** (as indicated via checkmarks shown
11 below):

12 Wallets and other coin or bill holders

13 Handbags, purses, clutches and totes

14 Belts

15 Footwear

16 Apparel, including gloves and headwear (and excluding sauna suits)

17 Jewelry

18 Key holders, keychains, and key caps

19 Luggage tags and ID cases

20 Bag charms and zipper pulls

21 Eyeglass cases

22 Coverings/cases for mobile electronic devices (e.g., for telephones, cameras, MP3
23 players, CDs/DVDs, and laptops

24 Coverings for journal/address books

25 Cosmetic cases/bags

26 Toiletry cases/bags

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The Categories Of Fashion Accessories Applicable To The Other Initial Settling Defendants Will Be Inserted By Plaintiffs' Counsel Upon Receipt.

EXHIBIT B

Persons Designated To Receive Notices Pursuant To Section 7.1

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Exhibit B

Person(s) to receive Notices Pursuant to Section 7.1

and Robert Falk

Name

Name

Office of General Counsel

Morrison + Foerster

Title

Title

1 Helen of Troy Plaza

425 Market Street, 32nd fl.

Address Line 1

Address Line 1

El Paso, Texas 79912

San Francisco, CA 94105

Address Line 2

Address Line 2

vcarson@hotus.com; wbass@hotus.com

Rfalk@wfo.com

Email Address

Email Address

Persons Designated By Other Settling Defendants To Receive Notices Pursuant To Section 7.1
Will Be Inserted By Plaintiffs' Counsel Upon Receipt.

EXHIBIT C

1 Clifford A. Chanler (Bar No. 135534)
Laurence D. Haveson (Bar No. 152631)
2 Josh Voorhees (Bar No. 241436)
Troy C. Bailey (*Pro Hac Vice*)
3 THE CHANLER GROUP
2560 Ninth Street
4 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
5 Telephone: (510) 848-8880
Facsimile (510) 848-8118

6 Attorneys for Plaintiffs
7 ANTHONY E. HELD, Ph.D., P.E. and
JOHN MOORE
8
9
10

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

14 ANTHONY E. HELD, Ph.D., P.E.,

15 Plaintiff,

16 v.

17 ALDO U.S., INC., ALDO GROUP, INC, *et al.*,

18 Defendants.

Case Nos. CGC-10-497729 and CGC-10-498981 (Consolidated Herein)

STIPULATION FOR ENTRY OF JUDGMENT

19
20 JOHN MOORE,

21 Plaintiff,

22 v.

23 KATE SPADE, LLC, *et al.*,

24 Defendants.
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26
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1 1. The following constitutes the knowing and voluntary election and stipulation of
2 the entity named below (“Company” or “Opt-In Settling Defendant”) to join as a Settling
3 Defendant under the Consent Judgment previously entered by the Court in the above-captioned
4 actions, *Held v. Aldo U.S., Inc. and Aldo Group, Inc., et al.*, San Francisco Superior Court Case
5 No. CGC-10-497729 and *Moore v. Kate Spade, LLC., et al.*, San Francisco Superior Court
6 Case No. CGC-10-498981, consolidated therein, (the “Action”) and to be bound by the terms
7 of that Consent Judgment.

8 2. At any time during the three-year period prior to the filing of this Stipulation
9 (“Relevant Period”), the Company has employed ten or more part-time or full-time persons and
10 has manufactured, imported, distributed, or offered for use or sale in California one or more
11 items in each of the following selected categories of Fashion Accessories as defined in the
12 Consent Judgment (section 2.5) and that are Covered Products as defined in the Consent
13 Judgment (section 2.2) (check all that apply):

- 14 Wallets and other coin or bill holders
- 15 Handbags, purses, clutches and totes
- 16 Belts
- 17 Footwear
- 18 Apparel, including gloves and headwear (and excluding sauna suits)
- 19 Jewelry
- 20 Key holders, keychains, and key caps
- 21 Luggage tags and ID cases
- 22 Bag charms and zipper pulls
- 23 Eyeglass cases
- 24 Coverings/cases for mobile electronic devices (e.g., for telephones, cameras,
25 MP3 players, CDs/DVDs, and laptops)
- 26 Coverings for journal/address books
- 27 Cosmetic cases/bags
- 28 Toiletry cases/bags

1 3. The terms of the Consent Judgment apply to the Opt-In Settling Defendant only
2 as to those categories of Fashion Accessories selected above, which are also Covered Products.

3 4. One or more items within each selected category of Fashion Accessories
4 contained, during the Relevant Period, Accessible Components as defined in the Consent
5 Judgment (section 2.1) containing DEHP.

6 5. The Company has not provided compliant Proposition 65 warnings in
7 conjunction with the sale or use of all such Covered Products in California during the Relevant
8 Period.

9 6. The Opt-In Settling Defendant has not performed a risk or exposure assessment
10 establishing that the Covered Products it offered for sale in California during the Relevant
11 Period did not require Proposition 65 warnings with respect to DEHP.

12 7. In conjunction with the execution of this Stipulation, the Company has provided
13 the payments required of it under the Consent Judgment and shall make all future payments
14 that may apply to the Company. The Company shall be bound by the injunctive relief
15 provisions set forth in the Consent Judgment as it relates to the Covered Products.

16 8. At least 65 days prior to the submission of this Stipulation to the Court for
17 entry, Anthony E. Held, Ph.D., P.E. ("Dr. Held") shall serve a 60-day notice letter alleging
18 certain violations of Proposition 65 with respect to sales of the Covered Products and, provided
19 it has been mailed to the Company at the address shown in Exhibit B, the Company agrees to
20 be deemed to have accepted service of the 60-day notice letter.

21 9. The Company hereby stipulates to be deemed to have voluntarily accepted
22 service of the summons and complaint in this Action upon the filing of this Stipulation and
23 agrees to be subject to the jurisdiction of the Court for purposes of the Consent Judgment.

24 10. Future notices concerning this Stipulation and the Consent Judgment shall be
25 provided to the Company through its designated contact as shown in Exhibit B of the Consent
26 Judgment. If the Company desires to change the individual and/or address designated to
27 receive notice on its behalf, the Company shall provide written notice to plaintiffs' counsel via
28 certified mail, return receipt requested or overnight courier at the address listed in Section 7.1

1 and to Settling Defendants' designated contacts via email at the email addresses shown on
2 Exhibit B of the Consent Judgment.

3 11. The undersigned have read, and the person and/or entity named below
4 knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation
5 and the Consent Judgment as previously approved and entered by the San Francisco County
6 Superior Court in this Action.

7 12. The undersigned has full authority to make the written representations above
8 and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

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IT IS HEREBY STIPULATED AND AGREED TO:

By: _____
(signature)

By: _____
On Behalf of Plaintiffs,
Anthony E. Held, Ph.D., P.E. and
John Moore

Name (printed/typed)

Title (printed/typed)

On Behalf of:

(Insert Company Name)

Opt-In Settling Defendant

Dated: _____

Dated: _____