

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

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

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

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

Case No. CIV1500844
**[PROPOSED] CONSENT JUDGMENT
AS TO CARDINAL HEALTH, INC.**
(Health & Safety Code § 25249.6 *et seq.*)

1 **1.1 INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (“Held”) and Cardinal Health, Inc. (“Cardinal”) (Held and Cardinal each individually referred to
5 as a “Party” and collectively as the “Parties”).

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Cardinal employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP
21 including, but not limited to, the *Leader Medical Exam Quality Vinyl Gloves, UPC No. 0 96295*
22 *11696 0*, manufactured, imported, sold, or distributed for sale in California by Cardinal,
23 hereinafter the “Products”.

24 **1.6 Notice of Violation**

25 On or about December 22, 2014, Held served Cardinal and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Cardinal
27 violated Proposition 65 by failing to warn its customers and consumers in California that the
28 Products expose users to DINP. To the best of the Parties’ knowledge, no public enforcer has

1 commenced and is diligently prosecuting the allegations set forth in the Notice.

2 **1.7 Complaint**

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

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

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

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 **2.1 Commitment to Reformulate or Warn**

26 Commencing on or before the Effective Date and continuing thereafter, Cardinal shall
27 only purchase for sale, manufacture for sale, sell, ship or offer for sale in California,
28 “Reformulated Products” as defined in Section 2.2, or Products that are sold with a clear and

1 reasonable warning pursuant to Section 2.3.

2 **2.2 Reformulated Standard**

3 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
4 that contain DINP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed
5 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
6 other methodology utilized by federal or state government agencies for the purpose of
7 determining DINP content in a solid substance.

8 **2.3 Health Hazard Warnings**

9 Commencing on the Effective Date, for all Products that are not Reformulated Products
10 (i.e. Products that contain more than 1,000 ppm DINP), Cardinal agrees that it will only ship, sell,
11 or offer such Products for sale in California with a clear and reasonable warning utilized pursuant
12 to this Section. Cardinal further agrees that the warning will be prominently placed with such
13 conspicuousness as compared with other words, statements, designs, or devices as to render it
14 likely to be read and understood by an ordinary individual under customary conditions before
15 purchase or use. For purposes of this Consent Judgment, a clear and reasonable warning shall
16 consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California
17 containing the following statement:

18 **WARNING:** This product contains DINP, a chemical known to
19 the State of California to cause cancer.¹

20 In the event that Cardinal conducts any sales of Products in or into California online via the
21 internet, the warning shall be made visible to the purchaser(s) of the Products prior to the time at
22 which the purchase is completed and shall meet the requirements specified above with regard to
23 the prominence, size and visibility of the warning message.

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27 ¹ The regulatory safe harbor warning language specified in tit. 27 Cal. Code Regs. §
28 25603.2(a)(2) may also be used if Cardinal employed it for Products manufactured prior to the
Effective Date, provided the use of any such safe harbor warning is discontinued after the
Effective Date.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to
4 in this Consent Judgment, Cardinal shall pay \$9,000 in civil penalties. Each civil penalty
5 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d)
6 with seventy-five percent (75%) of the funds paid to the California Office of Environmental
7 Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to
8 Held.

9 **3.1.1 Initial Civil Penalty.** Cardinal shall make an initial civil penalty payment
10 of \$3,000 in two checks for the following amounts made payable to: (a) “OEHHA” in the amount
11 of \$2,250; and (b) “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount of \$750,
12 as set forth in Sections 3.3 and 3.4.

13 **3.1.2 Final Civil Penalty.** On or before March 30, 2016, Cardinal shall make a
14 final civil penalty payment of \$6,000. Pursuant to Title 11 California Code of Regulations,
15 section 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if,
16 no later than March 15, 2016, an officer of Cardinal provides Held with written certification that
17 all of the Products it is selling or distributing for sale in California as of the date of such
18 certification are Reformulated Products as defined by Section 2.2, and that Cardinal will continue
19 to offer only Reformulated Products for sale in California in the future and will no longer employ
20 the warning alternative. Alternatively, Cardinal may certify that it is no longer offering the
21 Products for sale in California and that, if it recommences sales in California, it will only offer
22 Reformulated Products. The option to provide a written certification of reformulation (or
23 cessation of sales) in lieu of making the Final Civil Penalty payment otherwise required by this
24 Agreement is a material term, and time is of the essence.

25 **3.2 Reimbursement of Held’s Attorneys’ Fees and Costs**

26 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
28 issue to be resolved after the material terms of the agreement had been settled. Shortly after the

1 other settlement terms had been finalized, Cardinal expressed a desire to resolve Held's fees and
2 costs. The Parties then negotiated a resolution of the compensation due to Held and his counsel
3 under general contract principles and the private attorney general doctrine codified at California
4 Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this
5 agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if
6 any, Cardinal shall pay \$23,000. Cardinal's payment shall be due within ten (10) days of the
7 Effective Date, and delivered to the address in Section 3.4 in the form of a check payable to
8 "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Held
9 investigating, bringing this matter to Cardinal's attention, litigating, and negotiating a settlement
10 of the matter in the public interest.

11 **3.3 Payments Held In Trust**

12 With the exception of the Final Civil Penalty payment required by Section 3.1.2,
13 Cardinal shall deliver all payments required by this Consent Judgment to its counsel within thirty
14 (30) days of the date that this agreement is fully executed by the Parties. Cardinal's counsel
15 shall confirm receipt of settlement funds in writing to Held's counsel and, thereafter, hold the
16 amounts paid in trust until such time as the Court grants the motion for approval of the Parties'
17 settlement contemplated by Section 5. Within ten (10) days of the Effective Date, Cardinal's
18 counsel shall deliver all settlement payments it has held in trust to Held's counsel at the address
19 provided in Section 3.4. In the event the Final Civil Penalty payment required by Section 3.1.2
20 becomes due prior to the Effective Date, then Cardinal shall deliver the Final Civil Penalty
21 payment to its attorney to be held in trust until, and disbursed within ten (10) days after, the
22 Effective Date.

1 **3.4 Payment Address**

2 All payments required by this Consent Judgment shall be delivered to the following
3 address:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street
7 Parker Plaza, Suite 214
8 Berkeley, CA 94710

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Plaintiff's Release of Cardinal**

9 This Consent Judgment is a full, final, and binding resolution between Plaintiff and
10 Cardinal of any violation of Proposition 65 that was or could have been asserted by Plaintiff in
11 the public interest, on his own behalf, or on behalf of his past and current agents, representatives,
12 attorneys, successors, and/or assignees, as alleged in the Notice and as alleged or as could have
13 been alleged in the Complaint against: (a) Cardinal, its parents, subsidiaries, affiliates, directors,
14 officers, employees, attorneys, and assigns; and (b) Cardinal's downstream distributors,
15 wholesalers, retailers and/or customers, including, without limitation, each entity to which
16 Cardinal directly or indirectly distributed, distributes, sold or sells the Products, and the
17 successors and assigns of any of them, who may have used, maintained, distributed or sold the
18 Products (the "Released Parties"), based on the alleged failure to warn, including, without
19 limitation, pursuant to Health & Safety Code § 25249.6, about exposures to DINP from Products
20 manufactured, distributed, sold or offered for sale by Cardinal in California before the Effective
21 Date. Compliance with the terms of this Consent Judgment constitutes compliance with
22 Proposition 65. The Parties further agree and understand that this release extends to those
23 upstream entities that manufactured or supplied the Products to Cardinal, or from which Cardinal
24 directly or indirectly purchased the Products, but only to the extent said upstream manufacturer(s)
25 or supplier(s) Products were/are ultimately sold or distributed for sale by Cardinal.

26 **4.2 Held's Release of Proposition 65 Claims**

27 Held, in his individual capacity only and *not* in his representative capacity, also provides a
28 release to Cardinal and the Released Parties 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 Cardinal of any nature, character or kind,
3 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures
4 to DINP in Products manufactured, imported, distributed or sold by Cardinal before the Effective
5 Date.

6 **4.3 Cardinal's Release of Held**

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

12 **4.4 Mutual California Civil Code Section 1542 Waiver**

13 The Parties, including Plaintiff in his individual capacity only and *not* in any
14 representative capacity and Cardinal, each acknowledge that he/it is familiar with Section 1542 of
15 Civil Code, which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
20 OR HER SETTLEMENT WITH THE DEBTOR.

21 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
22 representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any
23 and all rights and benefits which he/it may have under, or which may be conferred on him/it by
24 the provisions of Civil Code § 1542 as well as under any other state or federal statute or common
25 law principle of similar effect, to the fullest extent that he/it may lawfully waive such rights or
26 benefits pertaining to the released matters, which are defined as Cardinal's alleged or actual
27 failure to warn about exposures to DINP from the Products, and Held and Held's counsel's
28 statements and actions made or taken in connection with the investigation or enforcement of

1 Held's claims with respect to the Products, as alleged in the Notice and Complaint.

2 **5. COURT APPROVAL**

3 This Consent Judgment is not effective until it is approved and entered by the Court and
4 shall be null and void if, for any reason, it is not approved and entered by the Court within one
5 year after it has been fully executed by all Parties. Plaintiff and Cardinal agree to support the
6 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
7 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
8 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
9 which motion Plaintiff shall draft and file and Cardinal shall support, appearing at the hearing if
10 so requested. If any third-party objection to the motion is filed, Plaintiff and Cardinal agree to
11 work together to file a reply and appear at any hearing. This provision is a material component of
12 the Consent Judgment and shall be treated as such in the event of a breach.

13 **6. APPLICATION OF JUDGMENT**

14 The terms contained in this Consent Judgment shall be submitted to the California
15 Attorney General's office prior to the entry of this Consent Judgment by the Court.

16 **7. COMPLIANCE WITH SERVICE AND REPORTING REQUIREMENTS**

17 Held and his attorneys agree to comply with the reporting and service requirements
18 referenced in California Health and Safety Code section 25249.7(f), and Title 11, California Code
19 of Regulations, section 3003, *et seq.*, providing the Attorney General's Office receive a form
20 reporting of the settlement, and service of the Consent Judgment and all moving papers in support
21 of the approval motion at least 45 days before the Court hears the motion.

22 **8. SEVERABILITY**

23 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
24 Judgment is found by a court to be unenforceable, the validity of the remaining provisions shall
25 not be adversely affected.

26 **9. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. In the event that Proposition 65 is repealed,

1 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
2 Cardinal may provide Plaintiff with written notice of any asserted change in the law, and shall
3 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
4 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to
5 relieve Cardinal from its obligation to comply with any pertinent state or federal law or
6 regulation.

7 **10. NOTICE**

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

12 **For Cardinal:**

13 Cardinal Health, Inc.
14 7000 Cardinal Place
15 Dublin, OH 43017

With a copy to:

16 John F. Cermak, Jr.
17 Baker & Hostetler LLP
18 11601 Wilshire Boulevard, Suite 1400
19 Los Angeles, CA 90025-0509

20 **For Plaintiff:**

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

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

28 **11. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

12. COMPLIANCE WITH REPORTING REQUIREMENTS

Plaintiff and his counsel agree to comply with the reporting form requirements referenced
in California Health and Safety Code section 25249.7(f).

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) upon written agreement of the Parties
3 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
4 motion of any party as provided by law and upon entry of a modified Consent Judgment by the
5 Court.

6 **14. ENTIRE AGREEMENT**

7 This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments, and understandings related hereto. No representations, oral or
10 otherwise, express or implied, other than those contained herein have been made by any Party
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
12 deemed to exist or to bind any of the Parties.

13 **15. AUTHORIZATION**

14 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
15 Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
16 party represented and legally to bind that party.

17 **AGREED TO:**

AGREED TO

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19 Dated: December 2, 2015

Dated: December 8, 2015

20 By: *Anthony E. Held*
21 Anthony E. Held, Ph.D., P.E.

By: *Michael L. Groesbeck*
Michael L. Groesbeck
Cardinal Health, Inc.

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