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Josh Voorhees, State Bar No. 241436  
THE CHANLER GROUP  
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Berkeley, CA 94710-2565  
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Attorneys for Plaintiffs  
JOHN MOORE and  
ANTHONY E. HELD, PH.D., P.E.

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

ANTHONY E. HELD, PH.D., P.E., *et al.*,  
Plaintiffs,  
v.  
CVS CAREMARK CORPORATION *et al.*,  
Defendants.

Case No. CGC-15-546785

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

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

1     **1.     INTRODUCTION**

2             **1.1     Parties**

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

7             **1.2     Plaintiff**

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

11            **1.3     Defendant**

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

15            **1.4     General Allegations**

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

20            **1.5     Product Description**

21            The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP that  
22    are manufactured, imported, sold, or distributed for sale in California by Medline including, but not  
23    limited to, the *CVS Pharmacy Latex-Free, Powder-Free Super-Soft Vinyl Gloves, Item/Model No.*  
24    *212654*; the *Nice! Powdered Vinyl Gloves WIC 431794, UPC No. 0 49022 55911 0*; and the *Curad*  
25    *3G Vinyl Powder-Free Synthetic Exam Gloves, Item/Model No. CUR8236T*, hereinafter the  
26    “Products.”

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1           **1.6 Notices of Violation**

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

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

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

14           **1.7 Complaint**

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

19           **1.8 No Admission**

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

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**1.9 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Medline as to the allegations in the Complaint, that venue is proper in the San Francisco Superior Court, and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” means the date on which the motion for approval of this Consent Judgment contemplated by Section 5 is granted by the Court.

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

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

Subject to the requirements for Medical Grade Products in Section 2.2 below, commencing on the Effective Date and continuing thereafter, Medline shall only purchase for sale, manufacture for sale, or distribute for sale in California “Reformulated Products.” For purposes of this Consent Judgment, Reformulated Products are defined as Products that contain DINP in a maximum concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other scientifically validated methodologies of determining DINP content in a solid substance.

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

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

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

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

**WARNING:** This product contains chemicals that are known to the State of California to cause cancer and birth defects and other reproductive harm.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payment**

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

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

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

1           **3.3     Payments Held in Trust**

2           All payments due under this Consent Judgment shall be delivered within ten (10) days of the  
3 date that this Consent Judgment is fully executed by the Parties, and held in trust by Medline’s  
4 counsel until the Court grants the motion for approval of the Parties’ settlement. Within two  
5 business days of the Effective Date, Medline’s counsel shall tender the initial civil penalty payment  
6 and attorneys’ fee reimbursement required by Sections 3.1 and 3.2.

7           **3.4     Payment Address**

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

9                           The Chanler Group  
10                           Attn: Proposition 65 Controller  
11                           2560 Ninth Street  
12                           Parker Plaza, Suite 214  
13                           Berkeley, CA 94710

14           **4.     CLAIMS COVERED AND RELEASED**

15           **4.1     Plaintiffs’ Public Release of Proposition 65 Claims**

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

27           **4.2     Plaintiffs’ Individual Release of Claims**

28           Plaintiffs, each in his individual capacity only and *not* in his representative capacity, also  
provide a release to Medline, Releasees, and Downstream Releasees which shall be effective as a full  
and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,

1 attorneys' fees, damages, losses, claims, liabilities and demands of Plaintiffs of any nature, character  
2 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
3 exposures to DINP in the Products sold or distributed for sale by Medline before the Effective Date.

4 **4.3 Medline's Release of Held**

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

10 **5. COURT APPROVAL**

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

14 **6. DISMISSAL OF CVS DEFENDANTS**

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

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

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

3 **9. NOTICE**

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

7 For Medline:

8 Andrew Mills, President  
9 Medline Industries, Inc.  
10 1 Medline Place  
11 Mundelein, IL 60060

12 with a copy to Medline's counsel:

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

17 For Plaintiffs:

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

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**10. POST EXECUTION ACTIVITIES**

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



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

5 **11. MODIFICATION**

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

9 **12. AUTHORIZATION**

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


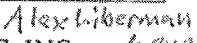
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16 By:   
ANTHONY E. HELD, PH.D., P.E.

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16 By:   
Andrew Mills, President   
MEDLINE INDUSTRIES, INC. *General Counsel*

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18 **AGREED TO:**

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20 Date: 3/3/2016

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JOHN MOORE

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