

1 Clifford A. Chanler, State Bar No. 135534
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,)

13 Plaintiff,)

14 v.)

15 BEIERSDORF, INC.; *et al.*,)

16 Defendants.)

CASE NO. CIV 1602045

**[PROPOSED] CONSENT JUDGMENT
AS TO THE ESTÉE LAUDER
COMPANIES INC.**

Action Filed: June 8, 2016
17
18

19
20 WHEREAS Anthony E. Held, Ph.D., P.E. (“Dr. Held”) has issued a 60-Day Notice of
21 Violation to The Estée Lauder Companies Inc. regarding the presence of benzophenone in Covered
22 Products, as further described in this Consent Judgment; and

23 WHEREAS the Parties acknowledge that the Notice to The Estée Lauder Companies Inc.
24 was intended to cover all of its Covered Products and the Covered Products of its subsidiaries; and

25 WHEREAS the Parties have discussed the claims accordingly, including the formal and
26 informal exchange of scientific information regarding, and risk assessments of, benzophenone
27 relevant to a wider range of products; and
28

1 WHEREAS the Parties, therefore, wish to resolve all Proposition 65 claims regarding
2 benzophenone in The Estée Lauder Companies Inc.’s and its subsidiaries’ (collectively, “Estee
3 Lauder”) Covered Products, they hereby agree as follows:

4 **1. INTRODUCTION**

5 **1.1 Parties**

6 This consent judgment (“Consent Judgment”) is entered into by and between plaintiff Dr.
7 Held and defendant Estee Lauder, with Dr. Held and Estee Lauder collectively referred to as the
8 “Parties” and individually as a “Party.”

9 **1.2 Dr. Held**

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

13 **1.3 The Estee Lauder Companies Inc. and Benzophenone**

14 Estee Lauder manufactures, and/or distributes, and/or sells products that are labeled as
15 having a Sun Protection Factor Value¹ (“SPF Products”), including products that have as their
16 primary function to serve as sunscreens. One ingredient used in such products to enhance their
17 ability to provide protection from the sun is octocrylene, an active ingredient approved for use in
18 sunscreens by the Federal Food & Drug Administration (“FDA”).² Octocrylene can at times
19 contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe
20 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et*
21 *seq.* (commonly known as “Proposition 65”) as a chemical “known to the state to cause cancer” as
22 Proposition 65 defines that phrase. 27 Cal. Code Reg. § 25000.

23 **1.4 Products Covered**

24 This Consent Judgment covers and applies to all octocrylene containing SPF Products that
25 are manufactured and/or distributed for sale in California and/or sold in California by Estee Lauder.
26 Specifically excluded from this Consent Judgment are octocrylene containing skin creams which
27

28 ¹ This term as used herein is defined at 21 C.F.R. § 352.3.

² See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

1 are defined as covered products in Exhibit A, Section IV of a proposed consent judgment with
2 plaintiff Shefa LMV, LLC in the case *Shefa LMV, LLC v. Concept II Cosmetics, et al.* (Case
3 Number CIV 1503341) currently pending before Marin County Superior Court, only if and at such
4 time as that consent judgment as to Estee Lauder is approved and entered as final by the Court
5 (“Excluded Products”). With the exception of the Excluded Products, products covered by this
6 Consent Judgment include all sizes, types, brands, packaging, formulations, delivery forms (e.g.,
7 sprays or lotions applied by hand), and intended uses (e.g., “faces,” children’s products, “sport,”
8 “moisturizing,” cosmetic purposes) (“Covered Products”). The Parties agree that the Notice to
9 Estee Lauder covers all of Estee Lauder’s Covered Products. This Consent Judgment, and all of its
10 terms, applies to all Covered Products, including without limitation new products and brands
11 introduced, developed, or acquired in the future by Estee Lauder which would today meet the
12 definition of Covered Products if they currently were being manufactured or distributed for sale, or
13 being sold, in California. The term Covered Product, as used in this Consent Judgment, includes
14 such future products and brands.

15 **1.5 General Allegations**

16 Dr. Held alleges in the Complaint that Estee Lauder manufactured, and/or distributed for
17 sale in California, and/or sold in California, Covered Products containing benzophenone without “a
18 clear and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Dr.
19 Held asserts this settlement is necessary to assure compliance with Proposition 65 now and in the
20 future and to settle Dr. Held’s alleged claims.

21 **1.6 Notice of Violation**

22 On March 28, 2016, Dr. Held served Estee Lauder and the requisite public enforcement
23 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Estee Lauder was in violation
24 of Proposition 65 for failing to warn consumers in California that its Covered Products exposed
25 users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced
26 and is diligently prosecuting the allegations set forth in the Notice.

27 **1.7 Complaint**

28 On June 8, 2016, Dr. Held filed a complaint in the Superior Court in and for the County of

1 Marin against Estee Lauder, alleging violations of California Health & Safety Code § 25249.6,
2 based on exposures to benzophenone contained in octocrylene-containing sunscreen sold by Estee
3 Lauder in the State of California, *Held v. Beiersdorf, Inc., et al.*, Case No. CIV1602049 (the
4 “Complaint”).

5 **1.8 No Admission**

6 Estee Lauder denies all the respective material, factual, and legal allegations contained in the
7 Notice and Complaint. Estee Lauder maintains that all of its Covered Products have been and are in
8 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
9 against interest by Estee Lauder of any fact, finding, conclusion, issue of law, or violation of law,
10 nor shall compliance with this Consent Judgment constitute or be construed as an admission against
11 interest by Estee Lauder of any fact, finding, conclusion, issue of law, or violation of law. This
12 section shall not, however, diminish or otherwise affect Estee Lauder’s obligations, responsibilities,
13 and duties under this Consent Judgment.

14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Estee Lauder as to the allegations in the Complaint, that venue is proper in the
17 County of Marin, Estee Lauder agrees that it employs or has employed ten or more persons during
18 time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to enter
19 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
20 Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
23 this Consent Judgment is approved and entered by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION**

25 **2.1 Reformulation Standard**

26 (a) Whereas, Estee Lauder, based on inquiry for purposes of this Consent Judgment, has
27 not identified any ingredient in its Covered Products other than octocrylene that is a source of
28 detectable benzophenone in such Covered Products. Further, based upon inquiry for purposes of

1 this Consent Judgment, Estee Lauder represents that it has investigated and concluded that there are
2 only a few major suppliers of octocrylene for the domestic market and that time and phasing is
3 needed for the marketplace of octocrylene suppliers to make the adjustments necessary to deliver
4 octocrylene with benzophenone meeting the Octocrylene Reformulation Standards.

5 (b) As of June 1, 2018, Estee Lauder shall only manufacture, or cause to be
6 manufactured, either Covered Products containing no more than (i) 50 parts per million (“ppm”)
7 benzophenone in the finished Covered Products; or (ii) 500 ppm of benzophenone in the ingredient
8 octocrylene used in the finished Covered Products. These first standards are interim standards.

9 (c) As of June 1, 2020, Estee Lauder shall only manufacture or cause to be
10 manufactured, either Covered Products containing no more than (i) 35 ppm benzophenone in the
11 finished Covered Product; or (ii) 350 ppm of benzophenone in the ingredient octocrylene used in
12 the finished Covered Products. These second standards are the “Final Reformulation Standards.”

13 (d) The dates and reformulations of the Covered Products as listed in Section 2.1 (b) and
14 (c) shall be referred to collectively as the “Reformulation Standards,” consisting of either the
15 Sections 2.1 (b)(i) and (c)(i) (the “Finished Product Reformulation Standards”) or Sections 2.1
16 (b)(ii) and (c)(ii) (the “Octocrylene Reformulation Standards”). Estee Lauder may at any time, at its
17 own election, comply with either, both, or any combination of the applicable Finished Product
18 Reformulation Standard or the Octocrylene Reformulation Standard with respect to any Covered
19 Product.

20 (e) The Reformulation Standards shall apply to Covered Products which are
21 manufactured by or on behalf of Estee Lauder on or after the applicable Reformulation Standard
22 dates.

23 **2.2. Notification**

24 Estee Lauder shall provide, no later than fourteen (14) days after the Effective Date, written
25 notice (the “Octocrylene Supplier Letter”) to its current octocrylene supplier or suppliers, informing
26 said supplier or suppliers of the Octocrylene Reformulation Standard and urging each supplier to
27 use reasonable efforts to provide expeditiously only octocrylene which complies with the
28 Octocrylene Reformulation Standard. Estee Lauder shall not include statements in the Octocrylene

1 Supplier Letter that will encourage a supplier to delay compliance with the Octocrylene
2 Reformulation Standard. Estee Lauder shall include a statement in its Octocrylene Supplier Letter
3 requesting that its supplier(s) use any and all commercially reasonable efforts to achieve an
4 Octocrylene Reformulation Standard of 200 ppm by June 1, 2020.

5 **2.3 Compliance with Reformulation Standard**

6 (a) In the event that Estee Lauder elects to meet the Finished Product Reformulation
7 Standard it may, at its option, either (i) test the Covered Product pursuant to a scientifically
8 appropriate application of U.S. Environmental Protection Agency testing methodologies 3580A,
9 8270C, or any other scientifically appropriate methodology for determining the benzophenone
10 content in a substance of the form of the specific Covered Product being tested, or (ii) may use the
11 appropriate mathematical calculation based on octocrylene percentage in the Covered Product and
12 the benzophenone concentration in the lot of octocrylene used in the finished Covered Product,
13 based either on testing of the octocrylene lot or on a certificate of analysis documenting
14 benzophenone content from the octocrylene supplier (the “Certificate of Analysis”) at the option of
15 Estee Lauder.

16 (b) In the event that Estee Lauder elects to meet the Octocrylene Reformulation
17 Standard, it shall obtain a Certificate of Analysis or analytical testing report for each lot of
18 octocrylene used in the manufacture of Covered Products. If, after Estee Lauder has advised its
19 octocrylene suppliers to include a Certificate of Analysis with each lot of delivered octocrylene, an
20 octocrylene supplier fails to include a Certificate of Analysis, Estee Lauder may correct the lapse
21 upon discovery.

22 (c) Estee Lauder may, absent grounds to question the accuracy, demonstrate compliance
23 with either Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate
24 of Analysis or comparable verified quantitative benzophenone content information. Such good faith
25 reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene
26 suppliers shall rely on any scientifically appropriate testing methodology for determining the
27 benzophenone content of octocrylene.

28 (d) Estee Lauder shall retain compliance documentation for three years after delivery of

1 a lot of octocrylene and compliance documentation shall be made available within 30 days of a
2 written request by Dr. Held, who may make no more than two such requests annually.

3 **3. MONETARY PAYMENTS**

4 **3.1 Civil Penalty**

5 Pursuant to Health and Safety Code section 25249.7(b), Estee Lauder shall pay initial civil
6 penalties and, if applicable, final civil penalties in the total amount of \$23,000. The penalty
7 payments shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d),
8 with 75% of the penalty amount paid to the California Office of Environmental Health Hazard
9 Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Dr. Held. Dr. Held’s
10 counsel shall be responsible for remitting Estee Lauder’s penalty payment(s) under this Settlement
11 Agreement to OEHHA. Each penalty payment shall be made to “The Chanler Group, Anthony E.
12 Held Client Trust Account” and remitted to the address indicated in Section 3.3 below.

13 **3.1.1 Initial Civil Penalty.** Within five (5) business days of the Effective Date
14 Estee Lauder shall issue a check payable to “The Chanler Group, Anthony E. Held Client Trust
15 Account” in the amount of \$2,500.

16 **3.1.2 Final Civil Penalty.** On or before June 30, 2018, Estee Lauder shall pay a
17 final civil penalty (the “Final Civil Penalty”) in the amount of \$20,500. However, the Final Civil
18 Penalty shall be waived in its entirety if Estee Lauder certifies that all Covered Products subject to
19 this Consent Judgment manufactured by or on behalf of Estee Lauder on or after June 1, 2018,
20 meets a Final Reformulation Standard. A responsible official with personal knowledge, after due
21 inquiry, of Estee Lauder that has exercised this election shall provide Dr. Held with a written
22 certification confirming compliance with the above conditions on or before June 15, 2018.

23 **3.2 Reimbursement of Fees and Costs**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
27 other settlement terms had been finalized, Estee Lauder expressed a desire to resolve Dr. Held’s
28 fees and costs. Estee Lauder agrees to pay Dr. Held and his counsel under the private attorney

1 general doctrine codified at California Code of Civil Procedure section 1021.5, for all work
2 performed through the mutual execution of this agreement, including without limitation the fees and
3 costs incurred as a result of investigating, bringing this matter to Estee Lauder’s attention,
4 negotiating a settlement, and seeking court approval of the same. Estee Lauder agrees to pay
5 \$20,000 in fees and costs within five (5) business days of the Effective Date in the form of a check
6 made payable to “The Chanler Group.”

7 **3.3 Payment Procedures**

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 Dr. Held’s Public Release of Proposition 65 Claims**

16 This Consent Judgment is a full, final and binding resolution of all claims that were or could
17 have been asserted in the Complaint arising out of Estee Lauder’s alleged failure to provide
18 Proposition 65 warnings for exposures to benzophenone in its Covered Products. Dr. Held, acting
19 on his own behalf and in the public interest, releases Estee Lauder and its parents, subsidiaries,
20 affiliated entities under (full or partial) common ownership, manufacturers, suppliers and the
21 directors, officers, employees, attorneys, and predecessors, successors or assigns of each of them
22 (“Releasees”) and each entity to whom Estee Lauder directly or indirectly distributes or sells the
23 Covered Products including, but not limited to, its downstream distributors, wholesalers, customers,
24 retailers, franchisers, cooperative members, licensors and licensees, and including any and all
25 subsidiaries, parents, marketplace retailers and/or affiliates of the foregoing retailers (collectively,
26 the “Distribution Chain Releasees”) for violations arising under Proposition 65 for unwarned
27 exposures to benzophenone from Estee Lauder’s Covered Products prior to the Effective Date. Dr.
28 Held’s release of claims applies to all Covered Products which Estee Lauder (or its manufacturers)
either manufactured, and/or distributed and/or sold prior to the Effective Date, regardless of the date
any person distributes or sells the subject Covered Products.

1 Upon entry of this Consent Judgment by the Court, going forward, Estee Lauder’s
2 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with
3 Proposition 65 with respect to benzophenone in Estee Lauder’s prior, current and future Covered
4 Products.

5 **4.2 Dr. Held’s Individual Release of Claims**

6 Dr. Held, in his individual capacity only and *not* in his representative capacity, also provides
7 a release to Estee Lauder, Releasees, and Distribution Chain Releasees, which release shall be
8 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
9 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Dr.
10 Held of any nature, character or kind, whether known or unknown, suspected or unsuspected,
11 arising out of alleged or actual exposures to benzophenone in Estee Lauder’s Covered Products
12 prior to the Effective Date.

13 **4.3 The Estee Lauder Companies Inc.’s Release of Dr. Held**

14 Estee Lauder, on behalf of itself, its past and current agents, representatives, attorneys,
15 successors and assignees, hereby waives any and all claims against Dr. Held and his attorneys and
16 other representatives, for any and all actions taken or statements made by Dr. Held and his attorneys
17 and other representatives, whether in the course of investigating claims, otherwise seeking to
18 enforce Proposition 65 against it in this matter, or with respect to the Covered Products up through
19 the Effective Date.

20 **4.4 Release and Dismissal of Retailer Defendants**

21 This Consent Judgment provides a “downstream” release which resolves all claims in the
22 Complaint for all Covered Products manufactured by, or on behalf of, distributed, or sold by Estee
23 Lauder. Any retailer who has been named in one or more Complaint (a “Retailer Defendant”) due
24 to its sale of one or more such Covered Products shall be dismissed without prejudice unless, prior
25 to the Effective Date that Retailer Defendant had also received a Notice that identified an exemplar
26 product not manufactured or supplied by either Estee Lauder or an entity that has previously
27 resolved Dr. Held’s claims with a downstream release.
28

1 **5. FORCE MAJEURE**

2 In the event that it is not feasible for Estee Lauder to obtain conforming octocrylene
3 necessary so as to comply with any Reformulation Standard due to an Act of God (including fire,
4 flood, earthquake, storm, hurricane or other natural disaster) or loss of adequate supplier ability to
5 supply octocrylene on an uninterrupted basis compliant with the applicable Octocrylene
6 Reformulation Standard, the provisions of this paragraph will dictate whether the applicable dates
7 for meeting the Reformulation Standards for Estee Lauder shall be extended. The criteria for
8 determining whether it is feasible to obtain conforming octocrylene shall include the following
9 factors: availability and reliability of supply that meets the applicable Octocrylene Reformulation
10 Standard, cost of such conforming octocrylene and resulting increase in manufacturers' prices
11 resulting from the use of conforming octocrylene, performance characteristics of conforming
12 octocrylene and of the resulting Covered Products, including but not limited to formulation,
13 performance, safety, efficacy, consumer acceptance, and stability.

14 Estee Lauder shall provide notice to Dr. Held and included in the notice shall be the specific
15 reason or reasons for invoking the Force Majeure clause, along with a reasonable estimate of the
16 time period during which Estee Lauder will be unable to comply with the applicable Reformulation
17 Standard. During the time invoked by Estee Lauder, the Reformulation Standard shall be revised to
18 100 ppm for the Finished Product Reformulation Standard and 1,000 ppm for the Octocrylene
19 Reformulation Standard.

20 If the Parties disagree as to whether Estee Lauder has a valid reason to invoke the Force
21 Majeure clause or disagree as to the length of time necessary for Estee Lauder to comply with the
22 Reformulation Standard, they shall attempt to resolve their differences through one or more sessions
23 with a mediator as mutually agreed to by the Parties or, if necessary, as referred by the Court. Dr.
24 Held's reasonable fees and costs of the mediation sessions under this Section shall be borne solely
25 by Estee Lauder unless otherwise allocated by the mediator, who shall consider whether mediation
26 was necessary and/or whether a Party asserted unreasonable or extreme positions. If the Parties
27 cannot reach resolution via a meet and confer or the mediator process, an aggrieved Party may
28

1 move the Court via a noticed motion on all Parties, with a copy to the Office of the Attorney
2 General, for such additional relief as that Party deems necessary.

3 **6. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by the Parties, or by such additional time as the Parties may agree in
7 writing.

8 **7. SEVERABILITY**

9 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
10 Judgment is held by a court to be void or unenforceable, or any Parties agree to modify any terms
11 due to input from the Office of the Attorney General or after a hearing before the Court in
12 connection with Dr. Held's Motion to Approve, or for other good cause, each Party to be bound by
13 any such modified terms must re-execute the modified Consent Judgment and such modified
14 Consent Judgment then shall be presented to the Court for approval by Dr. Held; provided,
15 however, that if a provision of this Consent Judgment declared void or unenforceable is material to
16 the Party for whom such term provided a benefit or protection, that Party can seek other remedies,
17 including, without limitation, rescission or reformation, based on the provision being declared void
18 or unenforceable.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
22 rendered inapplicable by reason of law generally, or as to the Covered Products, including without
23 limitation the delisting of benzophenone, then Estee Lauder may provide written notice to Dr. Held
24 of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no
25 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
26 Covered Products are so affected. None of the terms of this Consent Judgment shall have any
27 application to Covered Products sold outside of the State of California.
28

1 **9. FUTURE FEDERAL REGULATION OF OCTOCRYLENE OR BENZOPHENONE**

2 If FDA adopts new regulations or Congress enacts new laws governing octocrylene and/or
3 benzophenone content in any Covered Products, then the Parties shall meet and confer regarding the
4 effect of such changes in the law on the obligations of this Consent Judgment. If necessary to reach
5 agreement, the Parties may refer any specific issue for consideration by a mediator agreed to by the
6 Parties or, if necessary, as appointed by the Court. Notwithstanding the foregoing, if FDA
7 authorizes the percentage of octocrylene to increase above the current limit of 10% in Covered
8 Products, then this Consent Judgment shall by operation of law be amended to allow benzophenone
9 in finished Covered Products to rise in proportion to the percentage increase. Estee Lauder shall
10 notify Dr. Held of the date this Section operates to change any Finished Product Reformulation
11 Standard. This notice obligation shall sunset on June 1, 2023. Even if FDA changes the level of
12 permissible octocrylene prior to June 1, 2018, the civil penalty provisions of Section 3.1.2 shall
13 apply as written, not to any standards as modified by this Section 9. Estee Lauder represents they
14 are not aware that the FDA currently has published or made public plans to raise the allowable
15 levels of octocrylene in the Covered Products.

16 **10. NOTICE**

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

21 To Estee Lauder:

22 Michèle B. Corash, Esq.
23 Alejandro L. Bras, Esq.
24 Morrison & Foerster LLP
25 425 Market Street
26 San Francisco, California 94105

27 Andrea Lewis Allan
28 Vice President and Legal Counsel
 The Estée Lauder Companies
 New York, NY 10153

 To Anthony E. Held, Ph.D., P.E.:

 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

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

1 **11. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
3 each of which shall be deemed an original, and all of which, when taken together, shall constitute
4 one and the same document. A facsimile or pdf signature shall be as valid as the original.

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
10 Dr. Held is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
11 Estee Lauder agrees to urge the Court to approve this Consent Judgment. If any third party
12 objection to the noticed motion is filed, Dr. Held and Estee Lauder agree to work together to the
13 extent appropriate, and shall appear at any hearing before the Court to urge the Court to approve the
14 Consent Judgment.

15 **14. MODIFICATION**

16 This Consent Judgment may only be modified by a written instrument executed by the Party
17 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion
18 to modify shall be served on all Parties and the Office of the Attorney General.

19 **15. ENFORCEMENT**

20 **15.1 The Estee Lauder Companies Inc.**

21 In order to assert a potential violation of the Consent Judgment, Dr. Held shall provide
22 notice to Estee Lauder as set forth in this paragraph (“Notice of Breach”): (a) Dr. Held shall provide
23 all results of testing conducted on a specific Covered Product during the three month period for
24 which the violation is alleged; (b) such testing must be of no less than five (5) of the same Covered
25 Product (irrespective of the volume size of the container) collected within the three (3) month
26 period, from five different retail vendors; (c) the average of all test results for that period exceed the
27 finished Product Reformulation Standard; and (d) Dr. Held shall provide the alleged violator a copy
28 of (i) the purchase information for the allegedly violating Covered Product and (ii) a digital image

1 of the allegedly violating Covered Product showing the SKU/UPC and, if present on the container,
2 the Lot/Batch number(s).

3 Estee Lauder and Dr. Held shall, within thirty days of receipt of the Notice of Breach, meet
4 and confer regarding the alleged violation, during which time Dr. Held shall not file any motion,
5 application, action, or pleading regarding the alleged violation.

6 For the first alleged violation as to any specific Covered Product for which Dr. Held
7 provides Notice of Breach, Estee Lauder whose Covered Product is alleged to be in violation may
8 demonstrate compliance by providing (1) a Certificate of Analysis or comparable verified
9 quantitative benzophenone content information for five (5) units of the Covered Product or for the
10 lot(s) of octocrylene from the supplier(s) of the octocrylene in the Covered Product at issue showing
11 levels of benzophenone meeting the Octocrylene Reformulation Standard, or (2) a prior test result,
12 using scientifically appropriate test methodologies, of the lot(s) of octocrylene used in the finished
13 product which is the subject of the Notice of Breach, showing levels of benzophenone meeting the
14 Octocrylene Reformulation Standard. If Estee Lauder cannot demonstrate compliance, it must pay
15 a stipulated civil penalty of \$25,000.00 to be allocated according to Section 3.1.

16 In the event that, thereafter, Dr. Held provides a Notice of Breach pertaining to a second
17 alleged violation for the same Covered Product, he must do so in accordance with this section. For
18 the second alleged violation noticed by Dr. Held of the same Covered Product Estee Lauder may
19 demonstrate compliance with the terms of the Consent Judgment by providing test results, using
20 scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or
21 on the first three (3) lots of octocrylene received more than 30 days after receipt of the written
22 response showing compliance with the Octocrylene Reformulation Standard received from the
23 supplier of the octocrylene used to make the finished product which was the subject of the first
24 Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots are
25 received during the relevant time period, testing is required only for such lots as were received.
26 Such a showing shall constitute compliance.

27 In the event that Estee Lauder cannot demonstrate compliance in the manner set forth above
28 after receipt of a second Notice of Breach for the same Covered Product, and Dr. Held thereafter

1 provides notice in accordance with the provisions in this Section of a third alleged violation for the
2 same Covered Product, Estee Lauder shall pay a stipulated penalty of \$50,000.00 for each such
3 second or subsequent violation.

4 **15.2 Retailer Defendants**

5 If Dr. Held sends a Notice of Breach with regards to a Covered Product to a Retailer
6 Defendant, that Retailer Defendant shall be allowed to tender such notice to Estee Lauder.
7 Thereafter, Dr. Held shall proceed with Estee Lauder in accordance with Section 15.1 in lieu of the
8 Retailer Defendant.

9 **16. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 Consent Judgment.

13
14 AGREED TO:

AGREED TO:

15 Date: 6/20/2016

15 Date: 6/21/2016

16
17 By: Anthony E. Held

18 Anthony E. Held, Ph.D., P.E.

16
17 By: [Signature]

18 The Estee Lauder Companies
19 Inc.

20 GAVIN KAPLAN
21 SUP RHD