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9 Attorneys for Plaintiffs
10 JOHN MOORE and
11 ANTHONY E. HELD, PH.D., P.E.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 JOHN MOORE, *et al.*,

16 Plaintiff,

17 v.

18 UNILEVER UNITED STATES, INC., *et al.*,

19 Defendants.

Case No. CIV1500844

**[PROPOSED] CONSENT JUDGMENT
BETWEEN PLAINTIFF ANTHONY E.
HELD, PH.D., P.E. AND DEFENDANT
MUELLER SPORTS MEDICINE, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”)
4 and Mueller Sports Medicine, Inc. (“Mueller”), with Held and Mueller 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 to
8 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Mueller manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure
17 warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known
18 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 that
21 are manufactured, imported, sold, or distributed for sale in California by Mueller at any time
22 including, but not limited to, gloves sold as a component of the *Mueller LEAGUE First Aid Kit*,
23 *Mueller Product No. 200725, UPC #0 74676 20725 4*, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On December 22, 2014, Held served Mueller and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Mueller violated Proposition
27 65 by failing to warn its customers and consumers in California that the Products expose users to
28

1 DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On March 5, 2015, plaintiffs John Moore and Held filed the instant action ("Complaint"),
5 naming Mueller as a defendant for the alleged violations that are the subject of the Notice.

6 **1.8 No Admission**

7 Mueller represents that, since at least September 1, 2014, it has only purchased for sale or
8 manufactured for sale in California, DINP-free Products. Moreover, Mueller denies the material,
9 factual, and legal allegations contained in the Notice and Complaint, and it maintains that all of the
10 products that it has sold and distributed for sale in California, including the Products, have been, and
11 are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
12 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
13 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
14 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
15 diminish or otherwise affect Mueller's obligations, responsibilities, and duties under this Consent
16 Judgment.

17 **1.9 Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 the motion for approval of this Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 The Parties stipulate and Mueller agrees that commencing on October 1, 2015, and continuing
27 thereafter, Mueller shall only purchase for sale, manufacture for sale, or distribute for sale in
28 California, "Reformulated Products." For purposes of this Consent Judgment, Reformulated

1 Products are defined as products that contain DINP in a maximum concentration of 0.1 percent
2 (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
3 methodologies 3580A and 8270C or other methodology utilized by federal or state government
4 agencies for the purpose of determining DINP content in a solid substance.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, Mueller shall pay \$3,000 in civil penalties, after applying a \$7,000 penalty
9 credit for Mueller’s commitment to reformulate its Products as set forth in Section 2. The civil
10 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and
11 (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental
12 Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held.
13 Mueller shall deliver its payment in a single check for \$3,000 made payable to “Anthony E. Held,
14 Client Trust Account.” Held’s counsel shall be responsible for delivering OEHHA’s portion of the
15 penalty payment to OEHHA.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Held and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, Mueller expressed a desire to resolve Held’s fees and costs.
21 The Parties then attempted to (and did) reach an accord on the compensation due to Held and his
22 counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure section 1021.5 for all work performed on this matter, through the
24 approval of this consent judgment. On or before the Effective Date, Mueller shall pay \$23,000 for
25 the fees and costs incurred by Held investigating, bringing this matter to Mueller’s attention,
26 litigating and negotiating a settlement in the public interest. Except as provided in section 3.2,
27 Mueller shall not be required to pay any further costs or attorney’s fees.
28

1 **3.3 Payments Held in Trust**

2 All payments due under this Consent Judgment shall be delivered within five (5) days of the
3 date that this Consent Judgment is fully executed by the Parties, and held in trust by Mueller’s
4 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
5 Section 5. Within two business days of the Court’s approval of this Consent Judgment, Mueller’s
6 counsel shall tender the initial civil penalty payments and attorneys’ fee and costs reimbursements
7 required by Sections 3.1 and 3.2.

8 **3.4 Payment Address**

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

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

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Held’s Public Release of Proposition 65 Claims**

15 Held, acting on his own behalf and in the public interest, releases Mueller and its parents,
16 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
17 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
18 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
19 franchisers, cooperative members, licensors and licensees, and the predecessors, successors, or
20 assigns of any of them (“Downstream Releasees”) for any violations arising under Proposition 65
21 for unwarned exposures to DINP from Products manufactured, imported, sold, offered for sale, or
22 distributed for sale in California by Mueller, the Releasees, or the Downstream Releasees prior to
23 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
24 constitutes compliance with Proposition 65 with respect to the failure to warn about exposures to
25 DINP in Products manufactured, imported, sold, offered for sale, or distributed for sale in California
26 by Mueller, the Releasees, or the Downstream Releasees after the Effective Date. Compliance with
27 the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
28 by any Releasees an Additional Releasees regarding alleged exposures to DINP in the Products as

1 set forth in the 60-Day Notice, and the Complaint.

2 The Parties agree and understand that the releases provided by Moore under this Consent
3 Judgment shall not extend upstream to any entity in the chain of distribution that manufactured or
4 supplied the Products, or any component part thereof, to Mueller, except to the extent those products
5 are or have been sold in California by Mueller, which claims are released under this Consent
6 Judgment.

7 **4.2 Held's Individual Release of Claims**

8 Held, in his individual capacity only and *not* in his representative capacity, also provides a
9 release to Mueller, Releasees, and Downstream Releasees which shall be effective as a full and final
10 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
11 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
12 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
13 exposures to DINP in the Products manufactured, imported, sold, or distributed for sale in California
14 by Mueller, the Releasees, or the Downstream Releasees at any time.

15 **4.3 Mueller's Release of Held**

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

21 **4.4 Mutual California Civil Code Section 1542 Waiver**

22 The Parties each acknowledge he/it is familiar with Section 1542 of the Civil Code, which
23 provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 OR HER SETTLEMENT WITH THE DEBTOR.

29 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
30 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and

1 all rights and benefits which they may have under, or which may be conferred upon them by the
2 provisions of Civil Code section 1542 as well as under any other state or federal statute or
3 common law principle of similar effect, to the fullest extent he/it may lawfully waive such rights
4 or benefits pertaining to the released matters, as defined by Sections 4.1 through 4.3, above.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

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

20 **8. NOTICE**

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

24 For Mueller:

25 Brett Mueller, President
26 Mueller Sports Medicine, Inc.
27 1 Quench Drive
Prairie Du Sac, WI 53578

Rick Abegglen, Esq.
Mueller Sports Medicine, Inc.
One Quench Drive, PO Box 99
Prairie du Sac, WI 53578

28 with additional notice sent by email to
brett@muellersportsmed.com

with additional notice sent by email to
rick@rla-law.com

1 For Held:

2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

5 with additional notice sent by email to
6 brian@chanler.com

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Held agrees to comply with the reporting form requirements referenced in Health and Safety
15 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
16 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
17 furtherance of obtaining such approval, Held and Mueller agree to mutually employ their best efforts,
18 and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
19 approval of their settlement in a timely manner. For purposes of this Section, “best efforts” shall
20 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
21 supporting the motion, and appearing at the hearing before the Court.

22 **11. MODIFICATION**

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

1 **12. AUTHORIZATION**

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

4
5 **AGREED TO:**

AGREED TO:

6
7 Date: 11/6/2015

Date: November 5, 2015

8
9 By: Anthony E. Held
ANTHONY E. HELD, PH.D., P.E.

By: Brett Mueller
Brett Mueller, President
MUELLER SPORTS MEDICINE, INC.

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