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

11 JOHN MOORE, *et al.*,

12 Plaintiff,

13 v.

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

15 Defendants.
16

Case No. CIV1500844

**[PROPOSED] CONSENT JUDGMENT
AS TO D.W.L. INTERNATIONAL
TRADING, INC. AND OKABASHI
BRANDS, 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: John Moore (“Moore”) and D.W.L.
4 International Trading, Inc. (“D.W.L.”); and Anthony E. Held, Ph.D., P.E. (“Held”) and Okabashi
5 Brands, Inc. (“Okabashi”). D.W.L. and Okabashi are referred to collectively hereinafter as
6 “Defendants”, and Moore and Held are referred to collectively hereinafter as “Plaintiffs”). Moore,
7 Held, D.W.L., and Okabashi are each individually referred to herein as a “Party” and collectively as
8 the “Parties.”

9 **1.2 Plaintiffs**

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

13 **1.3 Defendants**

14 Defendants each employ ten or more individuals and are each a “person in the course of doing
15 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
16 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 Moore alleges that DWL manufactures, imports, sells, or distributes for sale in California,
19 vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure
20 warning required by Proposition 65. Further, Held alleges that Okabashi manufactures, imports,
21 sells, or distributes for sale in California, vinyl/PVC footwear containing diisononyl phthalate
22 (“DINP”) without first providing the exposure warning required by Proposition 65. DINP is listed
23 pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

24 **1.5 Product Description**

25 As to D.W.L., the products covered by this Consent Judgment are vinyl/PVC gloves
26 containing DINP including, but not limited to, the *Winco Disposable Vinyl Gloves, Style # GLV-M,*
27 *#53, UPC No. 8 11642 01756 7*, manufactured, imported, sold, or distributed for sale in California by
28

1 D.W.L., hereinafter the “Gloves”.

2 As to Okabashi, the products covered by this Consent Judgment are vinyl/PVC footwear
3 containing DINP including, but not limited to, the *Okabashi Flip Flops Maui, UPC No. 0 42929*
4 *91023 7*, manufactured, imported, sold, or distributed for sale in California by Okabashi, hereinafter
5 the “Footwear”.

6 **1.6 Notice of Violation**

7 On or about December 22, 2014, Moore served D.W.L. and certain requisite public
8 enforcement agencies with a “60-Day Notice of Violation” (“Glove Notice”) alleging that D.W.L.
9 violated Proposition 65 by failing to warn its customers and consumers in California that the Gloves
10 expose users to DINP.

11 On that same date, Held served Okabashi and certain requisite public enforcement agencies
12 with a “60-Day Notice of Violation” (“Footwear Notice”) alleging that Okabashi violated Proposition
13 65 by failing to warn its customers and consumers in California that the Footwear exposes users to
14 DINP.

15 The Footwear Notice and the Glove Notice are hereinafter referred to as the “Notices”.
16 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently
17 prosecuting the allegations set forth in the Notices.

18 **1.7 Complaint**

19 On March 5, 2015, Plaintiffs filed an instant action (“Complaint”), naming various defendants
20 for Proposition 65 allegations concerning exposures to DINP in California. Among them, D.W.L.
21 was named for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
22 the Glove Notice, and Okabashi was named for its alleged violations of Health and Safety Code
23 section 25249.6 that are the subject of the Footwear Notice.

24 **1.8 No Admission**

25 D.W.L. denies the material, factual, and legal allegations contained in the Glove Notice and
26 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
27 California, including the Gloves, have been, and are, in compliance with all laws.
28

1 Okabashi denies the material, factual, and legal allegations contained in the Footwear Notice
2 and Complaint, and it maintains that all of the products that it has sold and distributed for sale in
3 California, including the Footwear, have been, and are, in compliance with all laws. Okabashi further
4 asserts that it has reformulated the Products to eliminate all phthalates, including DINP, to ensure
5 continued compliance with Proposition 65.

6 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
7 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
8 constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or
9 violation of law. This Section shall not, however, diminish or otherwise affect Defendants'
10 obligations, responsibilities, and duties under this Consent Judgment.

11 **1.9 Jurisdiction**

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

16 **1.10 Effective Date**

17 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
18 the Motion for Approval of the Consent Judgment is granted by the Court.

19 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

20 **2.1 Okabashi**

21 Commencing on the Effective Date, and continuing thereafter Okabashi shall only
22 manufacture for sale, import for sale, sell, or distribute for sale, in California, "Reformulated
23 Products."

24 As to Okabashi Reformulated Products are Footwear containing DINP in concentrations less
25 than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection
26 Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state
27 government agencies for the purpose of determining DINP content in a solid substance.

28 **2.2 DWL**

1 **2.2.1 Reformulated Products**

2 Except as set forth below, commencing on December 31, 2015, and continuing thereafter,
3 D.W.L. shall only purchase for sale, or manufacture for sale in California, "Reformulated Products."
4 As to D.W.L. Reformulated Products are Gloves that contain DINP in concentrations less than 0.1
5 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency
6 testing methodologies 3580A and 8270C or other methodology utilized by federal or state
7 government agencies for the purpose of determining DINP content in a solid substance.

8 **2.2.2 Product Warnings**

9 DWL represents that for all non-Reformulated Products manufactured for sale or
10 purchased for sale into California before the Effective Date, it applied the following warning directly
11 on the Product:

12 CALIFORNIA RESIDENTS PROPOSITION 65 WARNING: Parts of this
13 product may contain chemicals known to the State of California to cause cancer
14 or birth defects or other reproductive harm. A variety of factors can affect your
15 personal risk of cancer or other reproductive harm. You can obtain more
16 information about Proposition 65 on <http://www.oehha.ca.gov/prop65.html>.

17 This interim warning shall not be used or applied to any Products manufactured for sale or purchased
18 for sale into California after the Effective Date. DWL may sell all units currently in inventory with
19 the interim warning. Products manufactured after the Effective Date shall be Reformulated Products
20 pursuant to section 2.2.1 or shall utilize the warning set forth in Section 2.2.3 below.

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1 **2.2.3** As of the Effective Date, DWL shall apply the following warning to all non-
2 Reformulated Products DWL imports, manufactures, or distributes for sale in California that are not
3 currently in DWL's inventory, which inventory bears the warning set forth in Section 2.2.2. The
4 warning shall be placed directly on the Product:

- 5 1. WARNING: This product contains DINP, a phthalate
6 chemical known to the State of California to cause cancer..
- 7 OR
- 8 2. WARNING: This product contains a chemical known
9 to the State of California to cause cancer.
- 10 OR
- 11 3. WARNING: This product contains chemicals known
12 to the State of California to cause cancer.
- 13 OR
- 14 4. WARNING: This product contains chemicals known
 to the State of California to cause cancer and birth defects and
 other reproductive harm.¹

15 The warning shall be provided on the packaging of the Products, or on the Products, with such
16 conspicuousness as to be likely to be seen by a typical consumer under ordinary conditions of use.
17 The warning called for in this section 2.2.3 shall not be placed on the bottom of the Product.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payment**

20 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
21 this Consent Judgment, Defendants shall pay \$6,000 in civil penalties. The civil penalty payment
22 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-
23 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
24 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Plaintiffs.

25 DWL shall deliver one half of the civil penalty in a single check made payable to “Moore,
26 Client Trust Account” in the amount of \$3,000. Okabashi shall deliver one half of the civil penalty in

27 _____
28 ¹ For warning option 3 and 4, the plural of the word “chemicals” shall only be used where
DWL is aware of multiple listed chemicals with the associated harms.

1 a single check made payable to “Held, Client Trust Account” in the amount of \$3,000. Plaintiffs’
2 counsel shall be responsible for delivering OEHHA’s portion of the penalty payments to OEHHA.
3 D.W.L and Okabashi shall only each be responsible for half of the civil penalty payment. Failure of
4 one Party to make any payment required under this Consent Judgment shall have no effect
5 whatsoever on any other Party.

6 **3.2 Reimbursement of Attorney’s Fees and Costs**

7 The parties acknowledge that Plaintiffs and their counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
9 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
10 the other settlement terms had been finalized, Defendants expressed a desire to resolve Plaintiffs’ fees
11 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
12 Plaintiffs and their counsel under general contract principles and the private attorney general doctrine
13 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
14 mutual execution of this Consent Judgment. On or before the Effective Date, Defendants shall each
15 pay \$16,000 for a total of \$32,000 in attorneys’ fees and costs incurred by Plaintiffs investigating,
16 bringing this matter to Defendants’ attention, litigating and negotiating a settlement in the public
17 interest. Each defendant shall pay one half of the fees and costs. D.W.L and Okabashi shall only
18 each be responsible for half of the civil penalty payment. Failure of one Party to make any payment
19 required under this Consent Judgment shall have no effect whatsoever on any other Party.

20 **3.3 Payments Held in Trust**

21 All payments due under this Consent Judgment shall be held in trust until such time as the
22 Court approves the Parties’ settlement. All payments due under this agreement shall be delivered
23 within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held
24 in trust by Plaintiffs’ counsel until the Court grants the motion for approval of this Consent
25 Judgment contemplated by Section 5. Within two business days of the Court’s approval of this
26 Consent Judgment, Defendants’ counsel shall tender the initial civil penalty payments and attorneys’
27 fee and costs reimbursements required by Sections 3.1 and 3.2.
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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 Plaintiffs’ Public Release of Proposition 65 Claims**

9 Plaintiffs, each acting on his own behalf and in the public interest, release Defendants and
10 their parents, subsidiaries, affiliated entities under common ownership, directors, officers,
11 employees, and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes
12 or sells the Gloves sold by D.W.L. or the Footwear sold by Okabashi including, but not limited to,
13 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members,
14 licensors and licensees (“Downstream Releasees”) for any violations arising under Proposition 65
15 for unwarned exposures to DINP from the Gloves sold by D.W.L. or to DINP from the Footwear
16 sold by Okabashi prior to the Effective Date, as set forth in the Notice.

17 **4.2 Plaintiffs’ Individual Release of Claims**

18 Plaintiffs, each in his individual capacity only and *not* in his representative capacity, also
19 provide a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a
20 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
21 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Plaintiffs of any nature,
22 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
23 actual exposures to DINP in the Gloves sold or distributed for sale by D.W.L. and in the footwear
24 sold or distributed by Okabashi, before the Effective Date.

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1 **4.3 Defendants' Release of Plaintiffs**

2 Defendants, each on its own behalf, and on behalf of its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waive any and all claims against
4 Plaintiffs and their attorneys and other representatives, for any and all actions taken or statements
5 made by Plaintiffs and their attorneys and other representatives, whether in the course of
6 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
7 respect to the Gloves sold by D.W.L. and the Footwear sold by Okabashi.

8 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of California
18 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
19 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants
20 may provide written notice to Plaintiffs of any asserted change in the law, and shall have no further
21 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Gloves and
22 the Footwear are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
23 Defendants from any obligation to comply with any pertinent state or federal toxics control laws.

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1 **8. NOTICE**

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

5
6 **Defendants**

7 David Li, President
8 D.W.L. International Trading Inc.
9 65 Industrial Road
10 Lodi, NJ 07644

Shelley Hurwitz, Esq.
Holland & Knight
400 South Hope Street, 8th Floor
Los Angeles, CA 90071
Attorneys for D.W.L. and Okabashi

11 Bahman Irvani, Chief Executive Officer
12 Kerry Cunningham, Executive Vice President
13 Okabashi Brands, Inc.
14 4823 Roy Carlson Boulevard, Suite A
15 Buford, GA 30518

16 **Plaintiffs**

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

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

24 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 **10. POST EXECUTION ACTIVITIES**

Plaintiffs agree 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, the parties agree to mutually employ their best efforts, and
those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial

1 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
2 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
3 supporting the motion, and appearing at the hearing before the Court.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

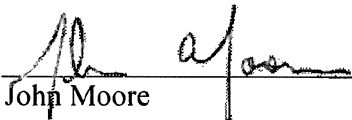
9 The undersigned are authorized to execute this Consent Judgment and have read, understood,
10 and agree to all of the terms and conditions contained herein.


11 **AGREED TO:**

AGREED TO:

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13 Date: 11/13/2015

Date: November 19, 2015

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15 By: 
John Moore

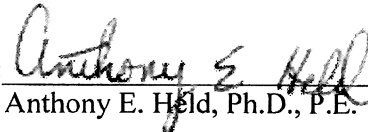
By: 
David Li, President
D.W.L. International Trading Inc.


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17 **AGREED TO:**

AGREED TO:

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19 Date: 11/12/2015

Date: 11.23.2015

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

By: 
Bahman Irvani, Chief Executive Officer
Okabashi Brands, Inc.

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