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10 ANTHONY E. HELD, Ph.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E.,

Plaintiff,

v.

MONDO USA, INC., *et al.*,

Defendants.

Case No. 199CV135580

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Mondo USA, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Dr. Held") and Mondo USA, Inc. (hereinafter "Mondo"), with Dr. Held and Mondo
5 collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Dr. Held alleges that Mondo employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code §25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that Mondo has manufactured, distributed and/or sold in the State of
16 California soft sports balls which contain di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed
17 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
18 Code §§25249.5, *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause
19 birth defects and other reproductive harm. DEHP is referred to herein as the "Listed Chemical."
20 Mondo denies that it manufactured, distributed and/or sold in the State of California soft sports balls
21 which contain di(2-ethylhexyl)phthalate ("DEHP").

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: *Mondo Ball*
24 *Asst, World Wrestling Entertainment (#0 81033 12489 5)* and other soft sports balls containing the
25 Listed Chemical. All such items shall be referred to herein as the "Products."

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1.6 Notice of Violation

On October 17, 2008, Dr. Held served Mondo and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided Mondo and such public enforcers with notice that alleged that Mondo was in violation of California Health & Safety Code §25249.6 ("Prop 65") for failing to warn consumers and customers that the Products exposed users in California to DEHP. Mondo responded to Dr. Held's Notice by advising Dr. Held that Mondo did not manufacture, distribute or offer for sale in California any Products containing the Listed Chemical.

On March 13, 2009, Dr. Held issued a "Second 60-Day Notice of Violation" upon Mondo, Mondo United, Inc. ("Mondo United"), Mondo, S.p.A., and various public enforcement agencies alleging that Mondo United was a closely-supervised division of Mondo and that, as such, Mondo was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. Mondo responded to Dr. Held's Second 60-Day Notice by denying that Mondo United was liable, and by further reiterating Mondo's denial that it manufactured, distributed or offered for sale in California any Products containing the Listed Chemical. Mondo further advised Dr. Held that the use of the Listed Chemical had been discontinued from the Products. For his part, Dr. Held repeatedly informed Mondo that tests from certified independent laboratories show that Mondo's products purchased in California within the relevant period contain the Listed Chemical at concerning levels. Given the uncertainties of litigation and proof during a trial, Mondo remained open to the prospect of settlement.

1.7 Complaint

On February 20 2009, Dr. Held, who was and is acting in the interest of the general public in California, in the Superior Court in and for the County of Santa Clara, filed a complaint in the case of *Held v. Mondo USA, Inc., et al.*, alleging violations of Health & Safety Code §25249.6 by Mondo based on the alleged exposures to DEHP contained in the Products manufactured, distributed and/or offered for sale in California by Mondo ("Complaint").

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1.8 No Admission

Mondo denies the material, factual, and legal allegations contained in Dr. Held's Notice and maintains that all products that it has manufactured, distributed and/or sold in California have been, and are, in compliance with all laws, and further maintains that the Products at issue also have been in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Mondo of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Mondo of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Mondo. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Mondo under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Mondo as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean August 17, 2009.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Mondo agrees that it shall manufacture or cause to be manufactured Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of the Listed Chemical, when analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

1 **3. MONETARY PAYMENTS**

2 **3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment against it, Mondo shall pay
4 \$3,500 in civil penalties to be apportioned in accordance with California Health & Safety Code
5 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
6 Hazard Assessment and the remaining 25% of these penalty monies remitted to Dr. Held as provided
7 by California Health & Safety Code §25249.12(d). Mondo shall issue two separate checks for the
8 penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
9 California's Office of Environmental Health Hazard Assessment ("Hirst & Chanler LLP in Trust for
10 OEHHA") in the amount of \$2,625 representing 75% of the total penalty and (b) one check to "Hirst
11 & Chanler LLP in Trust for A. Dr. Held" in the amount of \$875 representing 25% of the total
12 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued
13 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,625.
14 The second 1099 shall be issued to Dr. Held in the amount of \$875, whose address and tax
15 identification number shall be furnished, upon request, at least five calendar days before payment is
16 due. Counsel for Mondo shall deliver the payments by the Effective Date to counsel for Dr. Held,
17 who shall hold them in their Trust Account until five days following Court approval of this Consent
18 Judgment. The payments shall be delivered to the following address:

19 HIRST & CHANLER LLP
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. REIMBURSEMENT OF FEES AND COSTS**

25 **4.1 Attorney Fees and Costs**

26 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
27 private attorney general doctrine and principles of contract law. Under these legal principles, Mondo
28 shall reimburse Dr. Held's counsel for fees and costs, incurred as a result of investigating, bringing
 this matter to Mondo attention, and negotiating a settlement in the public interest. Mondo shall pay

1 Dr. Held and his counsel \$21,000 for all attorneys' fees, expert and investigation fees and costs,
2 which includes all future fees and costs associated with the approval process. Counsel for Mondo
3 shall deliver the payment by the Effective Date to counsel for Dr. Held, who shall hold it in their
4 Trust Account until five days following Court approval of this Consent Judgment. The payment shall
5 be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered to
6 the following address:

7 HIRST & CHANLER LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

10 Mondo shall issue a separate 1099 for fees and cost paid in the amount of \$21,000 to Hirst & Chanler
11 LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Dr. Held's Release of Mondo**

14 In further consideration of the promises and agreements herein contained, and for the
15 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
16 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
17 general public pursuant to Health and Safety Code Section 25249.7(d), hereby waives all rights to
18 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
19 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
20 demands, obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties,
21 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of
22 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
23 against Mondo and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers,
24 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
25 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
26 and employees, and sister and parent entities, including, but without limitation, Mondo United, Inc.,
27 Mondo S.p.A., and Mondo USA, Inc. (collectively "Releasees"). This release is limited to those
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1 claims that arise under Proposition 65, as such claims relate to any alleged failure to warn about
2 exposures to or identification of DEHP contained in the Products allegedly manufactured, sold and/or
3 distributed by any Releasee.

4 **5.2 Mondo's Release of Dr. Held**

5 Mondo waives any and all claims against Dr. Held, his attorneys and other representatives, for
6 any and all actions taken or statements made (or those that could have been taken or made) by Dr.
7 Held and his attorneys and other representatives, whether in the course of investigating claims or
8 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
9 Products.

10 **6. 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 all parties, in which event any monies that have been provided to Dr.
14 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen
15 (15) days after receiving written notice from Mondo that the one-year period has expired.

16 **7. DISPUTES UNDER THIS CONSENT JUDGMENT**

17 Dr. Held may, by motion or application for an order to show cause before this Court, enforce
18 the terms and conditions contained in this Consent Judgment; however, no action to enforce this
19 Consent Judgment may be brought by Dr. Held unless the Parties have met, either in person or by
20 telephone, and endeavor to resolve the dispute in an amicable manner. In the event that legal
21 proceedings are initiated to enforce the provisions of this Consent Judgment, however, the prevailing
22 party in such proceeding may seek to recover its costs and reasonable attorney's fees. As used
23 herein, the term "prevailing party" means a party that is successful in obtaining relief more favorable
24 to it than the relief that the other party was amenable to providing during the Party's good faith
25 attempt to resolve the dispute that is the subject of such enforcement action.

1 **8. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining shall not be adversely affected.

5 **9. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
9 Judgment are rendered inapplicable or are no longer required as a result of any such repeal or
10 preemption or rendered inapplicable by operation of law as to the Products, then Mondo shall have no
11 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
12 Products are so affected.

13 **10. NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant to
15 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
16 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the
17 other party at the following addresses:

18 For Mondo:

19 Peter D. Finocchiaro, Esq.
20 Finocchiaro & Associates
21 833 West Chicago Avenue
Suite 203
Chicago, IL 60642

22 For Dr. Held:

23 Proposition 65 Coordinator
24 HIRST & CHANLER, LLP
25 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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 Health & Safety Code §25249.7, a noticed motion
10 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
11 approval, Dr. Held and Mondo and their respective counsel agree to mutually employ their best
12 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the
13 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
14 include cooperating on the drafting and filing any papers in support of the required motion for
15 judicial approval.

16 **14. MODIFICATION**

17 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
18 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
19 any party and entry of a modified consent judgment by the Court. The Attorney General shall be
20 served with notice of any proposed modification to this Consent Judgment at least fifteen days in
21 advance of its consideration by the Court.

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1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 parties and have read, understood, and agree to all of the terms and conditions hereof.

4 **AGREED TO:**
5 **APPROVED**
6 Date: By Anthony E Held at 8:30 am, 7/17/09

AGREED TO:
Date: JULY 16th, 2009

7 By: Anthony E Held
8 ANTHONY E. HELD, Ph.D., P.E.

By: [Signature]
Frederico Stroppiana, President
MONDO USA, INC.

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10 **APPROVED AS TO FORM:**
11 Date: 7/20/09
12 HIRST & CHANLER LLP
13 By: [Signature]
14 David Lavine
15 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

APPROVED AS TO FORM:
Date: July 16, 2009
FINOCCHIARO & ASSOCIATES
By: [Signature]
Peter D. Finocchiaro
Attorneys for Defendant
MONDO USA, INC.

16 **IT IS SO ORDERED.**

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18 Date: _____

JUDGE OF THE SUPERIOR COURT

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