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11 Attorneys for Defendant  
12 OFFICE DEPOT, INC.  
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF ALAMEDA  
16 UNLIMITED CIVIL JURISDICTION  
17

18 ANTHONY E. HELD, Ph.D., P.E.,  
19 Plaintiff,  
20  
21 v.  
22 OFFICE DEPOT, INC.; and DOES 1 through  
150, inclusive,  
23 Defendant.  
24

Case No. RG09460921

**STIPULATION AND [PROPOSED] ORDER  
RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6 *et seq.*

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,  
4 P.E. (hereinafter “Held”), on the one hand, and Office Depot, Inc. (hereinafter “Office Depot”),  
5 Innovative Storage Designs, Inc., and its successor Advantus Corporation (collectively,  
6 “Advantus”), on the other hand. Held, Office Depot, and Advantus are collectively referred to  
7 herein as the “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendants**

13 Both Office Depot and Advantus employ ten or more persons and are persons in the  
14 course of doing business for purposes of Proposition 65.

15 **1.4 General Allegations**

16 Held alleges that Office Depot has distributed, and/or sold in the State of California vinyl  
17 keychains and vinyl pouches containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed  
18 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
19 Safety Code §§25249.5 *et seq.* (“Proposition 65”), as a chemical known to the State of California  
20 to cause birth defects and other reproductive harm. DEHP is referred to herein as the “Listed  
21 Chemical.” Held alleges that the vinyl pouches distributed and/or sold by Office Depot were  
22 manufactured and/or distributed by Advantus.

23 **1.5 Product Description**

24 The products that are covered by this Consent Judgment are defined as vinyl keychains  
25 containing di(2-ethylhexyl)phthalate including, but not limited to, *Office Depot Mini Notebook*  
26 *Keychain, SKU #179-235 (#7 35854 76539)* (the “Keychain Products”) and vinyl pouches  
27 containing di(2-ethylhexyl)phthalate including, but not limited to, *InFile Storage Expanding*  
28 *Zipper Pouch (#0 24591 50904 9)* (the “Pouch Products”). All such products containing

1 DEHP are referred to hereinafter as the “Products.”

2 **1.6 Notices of Violation**

3 On February 24, 2009 and August 14, 2009, Held served Office Depot and various public  
4 enforcement agencies with a “60-Day Notice of Violation” (the “Office Depot Notices”) that  
5 provided Office Depot with notice of alleged violations of Health & Safety Code §25249.6 for its  
6 failure to warn consumers that the Products that Office Depot sold exposed users in California to  
7 the Listed Chemical. After receiving the Office Depot Notices, Office Depot began to  
8 immediately start the process of reformulating such Products to be Phthalate Free (as defined  
9 below) and ceased any future shipment of those Products into California and, as of April 30,  
10 2010, ceased selling the Products at its retail locations in California.

11 On May 7, 2010, Held served Advantus and various public enforcement agencies with a  
12 “60-Day Notice of Violation” (the “Advantus Notice”) that provided Advantus with notice of  
13 alleged violations of Health & Safety Code §25249.6 for its failure to warn consumers that the  
14 Pouch Products exposed users in California to the Listed Chemical. Before receiving the  
15 Advantus Notice, Advantus had reformulated such Pouch Products to be Phthalate Free (as  
16 defined below) and ceased any future shipment of such Pouch Products for sale into California.

17 **1.7 Complaint**

18 On July 2, 2009, Held, who was and is acting in the interest of the general public in  
19 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the  
20 County of Alameda against Office Depot, and Does 1 through 150, alleging violations of Health  
21 & Safety Code § 25249.6 based on the alleged exposures to DEHP contained in the Keychain  
22 Products manufactured, distributed and/or sold by Office Depot. Upon entry of this Consent  
23 Judgment, the Complaint shall be deemed amended, *nunc pro tunc* as of October 24, 2009, to  
24 include the Pouch Products and to allege that Office Depot manufactured, distributed, and/or sold  
25 the Pouch Products to consumers in California, and the Complaint shall be deemed amended,  
26 *nunc pro tunc* as of July 16, 2010, to name Innovative Storage Designs, Inc. as Doe Number 1  
27 and Advantus Corporation as Doe Number 2 and to allege that the Pouch Products distributed  
28 and/or sold by Office Depot were manufactured and/or distributed by Innovative Storage

1 Designs, Inc. and Advantus Corporation.

2 **1.8 No Admission**

3 Both Office Depot and Advantus deny the material factual and legal allegations contained  
4 in Held's Notices and maintain that all products that each has sold and distributed in California or  
5 manufactured and/or distributed for sale in California, including the Products, have been and are  
6 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an  
7 admission by Office Depot or Advantus of any fact, finding, issue of law, or violation of law, nor  
8 shall compliance with this Consent Judgment constitute or be construed as an admission by  
9 Office Depot or Advantus of any fact, finding, conclusion, issue of law or violation of law, such  
10 being specifically denied by Office Depot and Advantus. However, this section shall not  
11 diminish or otherwise affect the obligations, responsibilities and duties of Office Depot and  
12 Advantus under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
15 jurisdiction over Office Depot and Advantus as to the allegations contained in the Complaint, that  
16 venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce  
17 the provisions of this Consent Judgment.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 1,  
20 2010.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 **2.1 Reformulation Commitments and Schedule**

23 Except as otherwise provided for in this Agreement, as of the Effective Date, Office  
24 Depot shall not offer the Products for sale in California, and Advantus shall not manufacture  
25 and/or distribute the Pouch Products for sale in California, unless they are Phthalate Free, as set  
26 forth below. For purposes of this Consent Judgment, "Phthalate Free" Products shall mean  
27 Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP when  
28 analyzed pursuant to Environmental Protection Agency ("EPA") testing methodologies

1 3580A and 8270C, or equivalent methods as may be allowed by any state or federal agency. This  
2 standard is referred to herein as the "Reformulation Standard".

3 Office Depot agrees that 100% of the Products that it offers for sale in California, if any,  
4 beginning on the Effective Date, shall be Phthalate Free. Advantus agrees that 100% of the  
5 Pouch Products that it manufactures and/or distributes for sale in California, if any, beginning on  
6 the Effective Date, shall be Phthalate Free.

7 **3. MONETARY PAYMENTS**

8 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

9 In settlement of all the claims referred to in this Consent Judgment against it, Office  
10 Depot and Advantus shall collectively pay \$10,000.00 (\$3,750.00 by Office Depot and \$6,250.00  
11 by Advantus) in civil penalties to be apportioned in accordance with California Health & Safety  
12 Code §25192, with 75% of these funds remitted to the State of California's Office of  
13 Environmental Health Hazard Assessment and the remaining 25% of these funds remitted to Held  
14 as provided by California Health & Safety Code §25249.12(d). Office Depot and Advantus shall  
15 each issue two separate checks for the penalty payment. Office Depot shall issue: (a) one check  
16 made payable to The Chanler Group in Trust for the State of California's Office of  
17 Environmental Health Hazard Assessment (OEHHA) in the amount of \$2,812.50, representing  
18 75% of the total penalty to be paid by Office Depot, and (b) one check to The Chanler Group in  
19 Trust for Held in the amount of \$937.50, representing 25% of the total penalty by Office Depot.  
20 Advantus shall issue: (a) one check made payable to The Chanler Group in Trust for the State of  
21 California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of  
22 \$4,687.50, representing 75% of the total penalty to be paid by Advantus, and (b) one check to  
23 The Chanler Group in Trust for Held in the amount of \$1,562.50, representing 25% of the total  
24 penalty to be paid by Advantus. Two separate 1099s shall be issued by both Office Depot and  
25 Advantus for the above payments to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-  
26 0284486) and to Held whose address and tax identification number shall be furnished, upon  
27 request, five calendar days before payment is due. The payments shall be delivered on or before  
28 August 6, 2010, at the following address:

1 The Chanler Group  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710

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

7 **4.1 Attorney Fees and Costs**

8 The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
10 issue to be resolved after the material terms of the agreement had been settled. After the other  
11 settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the  
12 compensation due to Held and his counsel under general contract principles and the private  
13 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all  
14 work performed through the mutual execution of this agreement. Office Depot shall reimburse  
15 Held and his counsel for fees and costs incurred as a result of investigating, bringing this matter  
16 to Office Depot's attention, and litigating and negotiating a settlement in the public interest.  
17 Office Depot and Advantus shall collectively pay Held and his counsel \$60,000.00 (\$26,250.00  
18 by Office Depot and \$33,750.00 by Advantus) for fees and costs incurred as a result of  
19 investigating, bringing this matter to Office Depot's and Advantus's attention, and litigating and  
20 negotiating a settlement in the public interest. Office Depot and Advantus shall each issue a  
21 separate 1099 for fees and costs (EIN: 20-3929984) and shall make their checks payable to "The  
22 Chanler Group" and shall be delivered on or before August 6, 2010, to the following address:

23 The Chanler Group  
24 Attn: Proposition 65 Controller  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710

28 **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Office Depot, Advantus, and Related Entities**

In further consideration of the promises and agreements herein contained, and for the  
payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and  
current agents, representatives, attorneys, successors and/or assignees, and in the interest of

1 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
2 form of legal action and releases all claims, including, without limitation, all actions, and causes  
3 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
4 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and  
5 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
6 (collectively "Claims"), that were brought or could have been brought against Office Depot and  
7 Advantus and their respective affiliates, subsidiaries, and their respective officers, directors,  
8 attorneys, representatives, shareholders, agents, employees, and sister and parent entities and each  
9 of Office Depot's and Advantus's downstream distributors, wholesalers, licensors, licensees,  
10 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent  
11 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,  
12 representatives, shareholders, agents, employees and sister and parent entities (collectively  
13 "Releasees") that arise under Proposition 65 or any other statutory or common law Claims that  
14 could have been asserted including such Claims as relate to Office Depot's, Advantus's, and each  
15 of their respective Releasees' alleged failure to warn about exposures to or identification of the  
16 Listed Chemical contained in the Products.

17 **5.2 Defendants' Release of Held**

18 Office Depot and Advantus each waive any and all claims against Held, his attorneys and  
19 other representatives, for any and all actions taken or statements made (or those that could have  
20 been taken or made) by Held and his attorneys and other representatives, whether in the course of  
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
22 and/or with respect to the Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and  
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
26 year after it has been fully executed by all parties, in which event any monies that have been  
27 provided to Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded  
28 within fifteen (15) days after receiving written notice from Office Depot that the one-year

1 period has expired.

2 7. **SEVERABILITY**

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

6 8. **GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of  
8 California and apply within the State of California. In the event that Proposition 65 is repealed or  
9 is otherwise rendered inapplicable by reason of state or federal law generally, or as to the  
10 Products, then Office Depot shall provide written notice to Held of any asserted change in the  
11 law, and shall have no further obligations pursuant to this consent judgment with respect to, and  
12 to the extent that, the Products are so affected.

13 9. **NOTICES**

14 Unless specified herein, all correspondence and notices required to be provided pursuant  
15 to 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 **To Office Depot:**

19 Office Depot  
20 6600 North Military Trail  
21 Boca Raton, FL 33496  
Attn.: Office of the General Counsel

22 **With a copy to:**

23 Jonathon J. Herzog, Esq.  
24 Weston Herzog LLP  
500 N. Central Avenue, Suite 650  
Glendale, CA 92103

25

26

27

28

1           **To Advantus:**

2           Advantus Corporation  
3           12276 San Jose Blvd., Building 618  
4           Jacksonville, FL 32223  
5           Attn: CEO

6           With a copy to:

7           Trenton H. Norris  
8           Arnold & Porter LLP  
9           One Embarcadero Center, 22<sup>nd</sup> Floor  
10          San Francisco, CA 94111

11          **To Held:**

12          Proposition 65 Coordinator  
13          The Chanler Group  
14          2560 Ninth Street  
15          Parker Plaza, Suite 214  
16          Berkeley, CA 94710-2565

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

19          **10.    COUNTERPARTS, FACSIMILE SIGNATURES**

20          This Consent Judgment may be executed in counterparts and by facsimile, each of which  
21          shall be deemed an original, and all of which, when taken together, shall constitute one and the  
22          same documents.

23          **11.    COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

26          **12.    ADDITIONAL POST EXECUTION ACTIVITIES**

27          The Parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed  
28          motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
obtaining such approval, Held, Office Depot, Advantus, and their respective counsel agree to  
mutually employ their best efforts to support the entry of this agreement as a Consent Judgment  
and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of  
this paragraph, best efforts shall include, at a minimum, drafting the motion to approve, filing all  
necessary papers, asserting any oral argument in support of the required motion for judicial

1 approval, and defending any appellate review of the Court's approval. Counsel for Office Depot  
2 and/or Advantus shall prepare the motion to approve, including the notice, memorandum of  
3 points and authorities and any papers related thereto for Held's review and additions on or before  
4 August 13, 2010. The Parties will then use their best efforts to finalize the motion to approve in a  
5 timely manner.

6 **13. MODIFICATION**

7 This Consent Judgment may be modified only: (1) by written agreement of the Parties  
8 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful  
9 motion of any Party and entry of a modified consent judgment by the Court.

10 **14. AUTHORIZATION**

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

14 **AGREED TO:** **APPROVED**  
15 *By Tony Held at 7:44 pm, Aug 02, 2010*

16 Date: \_\_\_\_\_

17 By: Anthony E Held  
18 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant, OFFICE DEPOT, INC.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant ADVANTUS CORPORATION

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant INNOVATIVE STORAGE  
DESIGNS, INC.

1 approval, and defending any appellate review of the Court's approval. Counsel for Office Depot  
2 and/or Advantus shall prepare the motion to approve, including the notice, memorandum of  
3 points and authorities and any papers related thereto for Held's review and additions on or before  
4 August 13, 2010. The Parties will then use their best efforts to finalize the motion to approve in a  
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12 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
13 Consent Judgment.

14 **AGREED TO:**

15 Date: \_\_\_\_\_

16 By: \_\_\_\_\_  
17 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**

15 Date: 8-9-10

16 By:   
17 Defendant, OFFICE DEPOT, INC.



**AGREED TO:**

19 Date: \_\_\_\_\_

20 By: \_\_\_\_\_  
21 Defendant ADVANTUS CORPORATION

**AGREED TO:**

24 Date: \_\_\_\_\_

25 By: \_\_\_\_\_  
26 Defendant INNOVATIVE STORAGE  
27 DESIGNS, INC.

28

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2 and/or Advantus shall prepare the motion to approve, including the notice, memorandum of  
3 points and authorities and any papers related thereto for Held's review and additions on or before  
4 August 13, 2010. The Parties will then use their best efforts to finalize the motion to approve in a  
5 timely manner.

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9 motion of any Party and entry of a modified consent judgment by the Court.

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

14 **AGREED TO:**

15 Date: \_\_\_\_\_

16  
17 By: \_\_\_\_\_  
18 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant, OFFICE DEPOT, INC.

**AGREED TO:**

19  
20 Date: 8/9/10 \_\_\_\_\_

21  
22 By:  \_\_\_\_\_  
23 Defendant ADVANTUS CORPORATION

**AGREED TO:**

24  
25 Date: 8/9/10 \_\_\_\_\_

26  
27 By:  \_\_\_\_\_  
28 Defendant INNOVATIVE STORAGE  
DESIGNS, INC.