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DR. WHITNEY R. LEEMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

DR. WHITNEY R. LEEMAN,

Plaintiff,

v.

I MARKETING GROUP, LLC; and DOES
1-150, inclusive,

Defendants.

) Case No. RG14716645

) **[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT I MARKETING
GROUP, LLC.**

) Date:

) Time:

) Dept: 15

) Judge: Hon. Ioana Petrou

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and I Marketing Group, LLC.**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman
4 (“Leeman” or “Plaintiff”) and defendant I Marketing Group, LLC (“IMG” or “Defendant”), with
5 Leeman and IMG collectively referred to as the “Parties.”

6 **1.2 Dr. Whitney R. Leeman.**

7 Leeman is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 I Marketing Group, LLC.**

11 Leeman alleges that IMG 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 §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Leeman alleges that IMG has manufactured, imported, distributed and/or sold vinyl/PVC
16 arm bands with DEHP for use in the State of California without the requisite Proposition 65
17 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
18 California to cause reproductive harm.

19 **1.5 Notice of Violation.**

20 On November 15, 2013, Leeman served IMG and various public enforcement agencies
21 with a document entitled “60-Day Notice of Violation” alleging that IMG violated Proposition
22 65 by failing to warn consumers that vinyl/PVC arm bands including, but not limited to, the
23 *Snap On! Reflective Armband 2 Count, UPC #8 03551 91566 9*, exposed users in California to
24 DEHP (“Notice”).

25 **1.6 Complaint.**

26 On March 7, 2014, Leeman filed a complaint in the Superior Court in and for the County
27 of Alameda against IMG and Does 1 through 150, *Leeman v. I Marketing Group, LLC, et al.*,

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1 Case No. RG14716645 (“Action”), alleging violations of California Health & Safety Code
2 § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl/PVC armbands
3 sold by IMG in the State of California.

4 **1.7 No Admission.**

5 The Parties enter into this Consent Judgment as a full and final settlement of all claims
6 that were raised in the Notice and Complaint, or that could have been raised in the Complaint,
7 arising out of the facts or conduct alleged therein. IMG denies the material, factual and legal
8 allegations contained in the Notice and the Complaint, and maintains that it is not a person
9 subject to Proposition 65 and that all of the products it has manufactured, imported, distributed
10 and/or sold in the State of California, including the Covered Products, have been, and are, in
11 compliance with all laws. By execution of this Consent Judgment and agreeing to comply with
12 its terms, IMG does not admit any facts or conclusions of law including, but not limited to, any
13 facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any
14 other statutory, common law or equitable requirements relating to DEHP in Covered Products,
15 such being specifically denied by IMG. Nothing in this Consent Judgment shall be construed as
16 an admission by IMG of any fact, conclusion of law, issue of law or violation of law, nor shall
17 compliance with this Consent Judgment constitute or be construed as an admission by IMG of
18 any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment
19 shall prejudice, waive or impair any right, remedy, argument or defense IMG may have in this or
20 any other future legal proceedings. This Consent Judgment is the product of negotiation and
21 compromise and is accepted by IMG for purposes of settling, compromising, and resolving
22 issues disputed in this action. However, this Section shall not diminish or otherwise affect the
23 obligations, responsibilities and duties of IMG under this Consent Judgment.

24 **1.8 Consent to Jurisdiction.**

25 For purposes of this Consent Judgment only, IMG stipulates that this Court has
26 jurisdiction over IMG as to the allegations contained in the Complaint, that venue is proper in
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1 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment.

3 **2. DEFINITIONS**

4 **2.1** “Covered Product[s]” means solely and exclusively the *Snap On! Reflective*
5 *Armband 2 Count, UPC #8 03551 91566 9*, which is manufactured, imported, distributed and/or
6 sold in the State of California by IMG.

7 **2.2** “Effective Date” means August 10, 2014.

8 **2.3** “Vendor” means a person or entity that manufactures, imports, distributes, or
9 supplies a product to IMG.

10 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

11 **3.1 Reformulation Commitment and Standards.**

12 As of the Effective Date, IMG shall only manufacture Covered Products which contain
13 less than or equal to 1,000 parts per million (“ppm”) of DEHP when analyzed pursuant to EPA
14 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or
15 state agencies for the purpose of determining DEHP content in a solid substance
16 (“Reformulated Covered Products”). By entering into this Consent Judgment, the Parties do
17 not intend to expand or restrict any obligations or responsibilities that may be imposed upon
18 IMG by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to
19 affect any defenses available to IMG under such other laws.

20 **3.2 Vendor Notification Requirement.**

21 To the extent it has not already done so, on or before the Effective Date, IMG shall
22 provide the reformulation standards specified in Section 3.1 for Reformulated Covered Products
23 to any and all of its vendors of Covered Products or their component parts that will be sold or
24 offered for sale to California consumers, and shall instruct each vendor to provide only
25 Reformulated Covered Products or component parts that meet the reformulation standards for
26 Reformulated Covered Products in Section 3.1 above.

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1 **3.3 Sales of Existing Products with Warnings**

2 Nothing in this consent judgment shall preclude IMG from shipping and selling in
3 California its existing inventory of Products. Commencing on August 1, 2014, IMG agrees that
4 any Products that IMG manufactured prior to August 1, 2014, and which IMG directly
5 distributes to, imports to, ships to, sells in, or offers for sale in California that are not
6 Reformulated Products as defined in Section 3.1 will include a warning affixed to the packaging,
7 labeling, or directly on each Product that states:

8 **WARNING:** This product contains a chemical known to the State of California
9 to cause birth defects and other reproductive harm.

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11 **4. MONETARY PAYMENTS**

12 In settlement of all the claims referred to in this Consent Judgment, IMG shall pay a total
13 of \$18,000.00 in civil penalties in accordance with this Section. Each penalty payment will be
14 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75%
15 of the funds remitted to the California Office of Environmental Health Hazard Assessment
16 (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman, as follows:

17 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §**
18 **25249.7(b).**

19 IMG shall pay an initial civil penalty in the amount of \$3,000.00 on or before August 10,
20 2014. IMG shall issue two separate checks to: (a) OEHHA, in the amount of \$2,250.00; and (b)
21 “The Chanler Group in Trust for Dr. Whitney R. Leeman.” in the amount of \$750.00. All
22 penalty payments shall be delivered to the addresses listed in Section 4.4.1 below.

23 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

24 IMG shall pay a final civil penalty in the amount \$15,000.00 on or before December 15,
25 2014. The final civil penalty shall be waived in its entirety, if, on or before December 1, 2014,
26 an Officer of IMG certifies in writing that it, as of August 31, 2014, has manufactured for sale in
27 California only Reformulated Covered Products and that it will continue to manufacture,
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1 distribute, sell and offer for sale in California only Reformulated Covered Products, or that it has
2 discontinued selling the Covered Products on or before the Effective Date. Such certification
3 must be received by The Chanler Group on or before December 1, 2014. The certification in
4 lieu of paying the final civil penalty provided by this Section is a material term, and time is of
5 the essence. Unless waived, IMG shall issue two separate checks for its final civil penalty
6 payment to: (a) OEHHA, in the amount of \$11,250.00; and (b) “The Chanler Group in Trust for
7 Dr. Whitney R. Leeman.” in the amount of \$3,750.00.

8 **4.3 Reimbursement of Plaintiff’s Fees and Costs.**

9 The Parties acknowledge that Leeman and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
11 leaving the fee issue to be resolved after the material terms of the agreement had been settled.
12 IMG then expressed a desire to resolve the fee and cost issue shortly after the other settlement
13 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
14 compensation due to Leeman and his counsel under general contract principles and the private
15 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
16 work performed (and to be performed) in this matter, except fees that may be incurred in
17 connection with a third-party, including the Office of the Attorney General, appeal (if any).
18 Under these legal principles, IMG shall pay the amount of \$32,000.00 to reimburse Plaintiff’s
19 fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
20 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval
21 of this Consent Judgment in the public interest. This payment shall be made payable on or
22 before the Effective Date to The Chanler Group and shall be delivered to the address in Section
23 4.4.1(a) below.

24 **4.4 Payment Procedures.**

25 **4.4.1 Funds Leeman In Trust**

26 (a) All payments owed to Leeman, pursuant to Sections 4.1 through
27 4.2, shall be delivered to the following payment address:
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The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1 and 4.2, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHA.

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of August 10, 2014, Plaintiff shall meet and confer with IMG about mutually agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall return promptly any and all monies paid and Leeman in trust herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon IMG’s written request.

5. CLAIMS COVERED AND RELEASED

5.1 Leeman, acting on behalf of herself and in the public interest, hereby releases IMG, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders (“Defendant Releasees”), and any of its downstream distributors, wholesalers, customers, retailers (including 99 Cents Only Stores,

1 LLC), franchisees, cooperative members, licensors, licensees, and any other person or entity to
2 whom they directly or indirectly distribute or sell Covered Products (“Downstream Defendant
3 Releasees”), from any alleged or actual violation of Proposition 65 that has been asserted by
4 Leeman in the public interest in his Notice and Complaint regarding the alleged failure to warn
5 about exposure to DEHP in Covered Products sold or distributed by IMG prior to the Effective
6 Date. IMG’s compliance with this Consent Judgment shall constitute compliance with
7 Proposition 65 with respect to DEHP in Covered Products.

8 **5.2** Leeman on behalf of herself, her past and current agents, representatives,
9 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
10 all rights to institute or participate in, directly or indirectly, any form of legal action and releases
11 all claims, including, without limitation, all actions, and causes of action, in law or in equity,
12 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
13 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
14 whatsoever, fixed or contingent (collectively “Claims”), against IMG, Defendant Releasees, and
15 Downstream Defendant Releasees arising from any violation of Proposition 65 regarding the
16 failure to warn about exposure to DEHP in Covered Products sold or distributed prior to the
17 Effective Date.

18 **5.3** Leeman also, in her individual capacity only and *not* in her representative
19 capacity, provides a general release herein which shall be effective as a full and final accord and
20 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
21 damages, losses, claims, liabilities and demands of Leeman of any nature, character or kind,
22 known or unknown, suspected or unsuspected, arising out of alleged exposure to any chemical
23 listed under Proposition 65 from use of the Covered Products manufactured prior to the Effective
24 Date. Leeman acknowledges that she is familiar with Section 1542 of the California Civil Code,
25 which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
28 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

2 Leeman, in her individual capacity only and *not* in her representative capacity, expressly waives
3 and relinquishes any and all rights and benefits which she may have under, or which may be
4 conferred on her by the provisions of Section 1542 of the California Civil Code as well as under
5 any other state or federal statute or common law principle of similar effect, to the fullest extent
6 that she may lawfully waive such rights or benefits pertaining to the released matters. In
7 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
8 complete release notwithstanding the discovery or existence of any such additional or different
9 claims or facts arising out of the released matters.

10 The Parties further understand and agree that this release shall not extend upstream to
11 any entities, other than IMG, that manufactured the Covered Products or any component parts
12 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
13 thereof to IMG.

14 **5.4** IMG waives any and all Claims against Leeman, her attorneys, and other
15 representatives for any and all actions taken or statements made (or those that could have been
16 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
18 matter, and/or with respect to the Covered Products.

19 **5.5** IMG also provides a general release herein which shall be effective as a full and
20 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys' fees, damages, losses, claims, liabilities and demands of IMG of any nature, character
22 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
23 Action. IMG acknowledges that it is familiar with Section 1542 of the California Civil Code,
24 which provides as follows:

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

1 IMG expressly waives and relinquishes any and all rights and benefits which it may have under,
2 or which may be conferred on it by, the provisions of Section 1542 of the California Civil Code,
3 as well as under any other state or federal statute or common law principle of similar effect, to
4 the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
5 matters. In furtherance of such intention, the release hereby given shall be and remain in effect
6 as a full and complete release notwithstanding the discovery or existence of any such additional
7 or different claims or facts arising out of the released matters.

8 **6. COURT APPROVAL**

9 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right to a
10 trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment,
11 and of any and all interim rulings, including all pleading, procedural, and discovery orders.

12 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
13 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
14 which Leeman shall file and which IMG shall support as reasonably necessary.

15 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
16 and any and all prior agreements between the Parties merged herein shall terminate and become
17 null and void, and the action shall revert to the status that existed prior to the execution date of
18 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
19 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
20 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
21 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
22 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

23 **7. GOVERNING LAW**

24 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
25 California, and shall apply only to Covered Products offered for sale in the State of California.
26 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of
27 law generally, or as to the Covered Products, then IMG may provide written notice to Leeman of
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1 any asserted change in the law, and shall have no further obligations pursuant to this Consent
2 Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **7.2** The Parties, including their counsel, have participated in the preparation of this
4 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
5 Consent Judgment was subject to revision and modification by the Parties and has been accepted
6 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
7 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
8 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
9 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
10 resolved against the drafting Party should not be employed in the interpretation of this Consent
11 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

12 **8. NOTICES**

13 **8.1** Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
15 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
16 Party by the other Party at the following addresses:

17 To IMG:

18 Ronan Cohen, Esq.
19 644 Flint Avenue
20 Long Beach, CA 90814

21 To Leeman:

22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

27 **8.2** Any Party, from time to time, may specify in writing to the other Party a change
28 of address to which all notices and other communications shall be sent.

1 **9. MODIFICATION**

2 **9.1 Modification.** This Consent Judgment may be modified by written agreement of
3 the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any
4 Party and entry of a modified Consent Judgment by the court.

5 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
6 regulation is adopted that addresses the DEHP content of Covered Products sold in California
7 hereunder, any Party shall be entitled to request that the Court modify the reformulation standard
8 in Section 3.1 of this Consent Judgment for good cause shown.

9 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
10 or to allege a violation thereof shall first attempt in good faith to meet and confer with the other
11 Party prior to filing a motion to modify the Consent Judgment.

12 **10. ENTIRE AGREEMENT**

13 **10.1** This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
16 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
17 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
18 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
19 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
20 waiver unless set forth in writing between the Parties.

21 **11. RETENTION OF JURISDICTION**

22 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent To Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
24 provision thereof, under C.C.P. §664.6.

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12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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

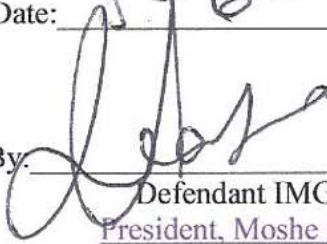
AGREED TO:

Date: _____

By: _____
Plaintiff Dr. Whitney R. Leeman

AGREED TO:

Date: 8-6-2014

By: 
Defendant IMG, Inc.
President, Moshe Leashno

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12. COUNTERPARTS; FACSIMILE SIGNATURES

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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 8/5/14

Date: _____

By: Whitney Leeman
Plaintiff Dr. Whitney R. Leeman

By: _____
Defendant IMG, Inc.
President, Moshe Leashno