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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION
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15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 IDENTITY GROUP HOLDINGS CORP.; *et*
19 *al.*,

20 Defendants.
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Case No. CIV1503523

[PROPOSED] CONSENT JUDGMENT

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

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Anthony E. Held, Ph.D., P.E.
4 (“Held”) and Defendant, Identity Group Holdings Corp. (“Identity Group”), with Held and Identity
5 Group each individually referred to 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Held alleges that Identity Group manufactures, sells, or distributes for sale in California,
16 vinyl/PVC self stick sheets containing di(2-ethylhexyl)phthalate (“DEHP”), without first providing a
17 clear and reasonable warning required by Proposition 65. DEHP is listed pursuant to Proposition 65
18 as a chemical known to the State of California to cause cancer, birth defects and reproductive harms.

19 **1.5 Product Description**

20 Identity Group’s products that are covered by this Consent Judgment are defined as
21 vinyl/PVC self stick sheets containing DEHP including, without limitation, the *Headline Sign Self*
22 *Stick Vinyl Sheet, #38003, UPC #0 83392 38003 5*, which are manufactured, distributed, sold and/or
23 offered for sale by Identity Group in the State of California, hereinafter the “Covered Products.”

24 **1.6 Notice of Violation**

25 On April 29, 2015, Held served Identity Group and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Identity Group violated
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1 Proposition 65 when they failed to warn their customers and consumers in California that vinyl/PVC
2 self stick sheets expose users to DEHP.

3 **1.7 Complaint**

4 On or about September 25th, 2015 Held filed the instant action (“Complaint”), naming
5 Identity Group as defendant for its alleged violations of Health and Safety Code section 25249.6 that
6 are the subject of the Notice.

7 **1.8 No Admissions**

8 Identity Group denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that they have sold and distributed for sale in
10 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
11 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
12 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
14 This Section shall not, however, diminish or otherwise affect Identity Group’s obligations,
15 responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction and Venue**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Identity Group as to the allegations in the Complaint, that venue is proper in the
19 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to California Code of Civil Procedure (“CCP”) § 664.6 and Proposition
21 65.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall be five (5) days after
24 Held’s counsel provides written notice to Identity Group’s counsel that this Consent Judgment has
25 been approved and entered by the court.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Covered Products which
4 Identity Group sells, or distributes for sale in California shall either: a) contain less than or equal to
5 1,000 parts per million of DEHP when analyzed pursuant to U.S. Environmental Protection Agency
6 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state
7 agencies for the purpose of determining DEHP content in a solid substance (“Reformulated
8 Products”); or b) have a clear and reasonable warning pursuant to Section 2.2 below.

9 **2.2 Clear and Reasonable Warnings**

10 Commencing on the Effective Date, Identity Group shall provide clear and reasonable
11 warnings for all Covered Products as set forth in subsections 2.2(a) and (b) for all products that do
12 not currently have warnings and that do not qualify as Reformulated Products as described in section
13 2.1 above. Each warning shall be prominently placed with such conspicuousness as compared with
14 other words, statements, designs, or devices as to render it likely to be read and understood by an
15 ordinary individual under customary conditions before purchase or use. Each warning shall be
16 provided in a manner such that the consumer or user understands to which *specific* Covered Product
17 the warning applies, so as to minimize the risk of consumer confusion.

18 **(a) Retail Store Sales.**

19 **(i) Product Labeling.** Upon receipt of the Notice, Identity Group affixed a
20 warning to the packaging for each non-Reformulated Covered Product that states:

21 WARNING: This product contains chemicals known to the State of California to
22 cause cancer and birth defects or other reproductive harm.

23 As of the Effective Date, and subject to subsection 2.2(a)(ii) below, Identity Group shall affix
24 a warning to the packaging, labeling, or directly on each non-Reformulated Covered Product’s
25 packaging provided for sale in retail outlets in California that states:

26 WARNING: This product contains chemicals known
27 to the State of California to cause cancer
28 and birth defects and other reproductive harm.

1 **(ii) Point-of-Display In-Store Warnings.** Alternatively, Identity Group may
2 provide point-of-display in-store warning signs in the form below to its current and future direct sale
3 retailers in California with instructions to post the warnings in close proximity to the point of display
4 of the non-Reformulated Covered Products. Such instruction sent to Identity Group's current and
5 future direct sale retailers shall be sent by email, read receipt requested, or certified mail, return
6 receipt requested. A sample copy of such instructions shall be provided to Held's counsel.

7 WARNING: This product contains chemicals known
8 to the State of California to cause cancer
9 and birth defects and other reproductive harms.

10 The above warning language shall only apply to warning signs that Identity Group has direct
11 and sole control over. Held understands that Identity Group does not control warning language
12 prepared and provided by retailers. This is not intended to diminish Identity Group's obligation to
13 work with its direct sale retailers to provide point-of-display warnings, as provided in Section
14 2.2(a)(ii).

15 **(b) Mail Order Catalog and Internet Sales.** If Identity Group offers non-Reformulated
16 Covered Products for sale in California, after the Effective Date, via mail order catalog and/or the
17 internet, it shall provide warnings pursuant to this Section 2.2(b). Warnings given in the mail order
18 catalog or on the internet shall identify the *specific* non-Reformulated Covered Products to which the
19 warning applies as further specified in Sections 2.2(b)(i) and (ii).

20 Further, Identity Group shall notify and instruct its current and future downstream direct sale
21 retailers, distributors, and wholesalers that sell or offer for sale Covered Products via mail order
22 catalog and/or the internet, to comply with the warning requirements of this section. Identity Group
23 shall notify and instruct such downstream direct sale retailers, distributors, and wholesalers via email,
24 read receipt requested, or certified mail, return receipt requested. A sample copy of such instructions
25 shall be provided to Held's counsel.

26 Held understands that Identity Group does not control the content of third party mail order
27 catalogs and/or websites. Therefore, so long as Identity Group notifies and instructs its known
28 downstream retailers, distributors, and wholesalers to comply with this provision and instructs them

1 to instruct all entities in the stream of commerce to comply with this provision, and thereafter
2 provides Held's counsel with a sample copy of such notifications and instructions, Identity Group
3 shall be deemed in compliance with the warning provision in section 2.2(b) with respect to mail order
4 catalog and/or internet sales of its Covered Products. This shall not diminish Identity Group's other
5 warning obligations under Section 2.2(a).

6 **(i) Mail Order Catalog Warning.** Pursuant to this section, any warning
7 provided by Identity Group in a mail order catalog shall be in the same type size or larger than the
8 product description text within the catalog. The following warning shall be provided on the same
9 page and in the same location as the display and/or description of the non-Reformulated Covered
10 Product:

11 WARNING: This product contains chemicals known
12 to the State of California to cause cancer
and birth defects and other reproductive harms.

13 Where it is impracticable to provide the warning on the same page and in the same location as
14 the display and/or description of the non-Reformulated Covered Product, Identity Group may utilize
15 a designated symbol to cross reference the applicable warning and shall define the term "designated
16 symbol" with the following language on the inside of the front cover of the catalog or on the same
17 page as any order form for the non-Reformulated Covered Product(s):

18 WARNING: Certain products identified with this symbol ▼
19 and offered for sale in this catalog contain chemicals
20 known to the State of California to cause cancer and
birth defects and reproductive harms.

21 The designated symbol must appear on the same page and in close proximity to the display
22 and/or description of the non-Reformulated Covered Product. On each page where the designated
23 symbol appears, Identity Group must provide a header or footer directing the consumer to the
24 warning language and definition of the designated symbol.

25 **(ii) Internet Website Warning.** Pursuant to this section, a warning shall be given
26 in conjunction with the sale of the non-Reformulated Covered Products by Identity Group via the
27 internet, which warning shall appear either: (a) on the same web page on which a non-Reformulated
28 Covered Product is displayed; (b) on the same web page as the order form for a non-Reformulated

1 Covered Product; (c) on the same page as the price for any non-Reformulated Covered Product; or
2 (d) on one or more web pages displayed to a purchaser during the checkout process. The following
3 warning statement shall be used and shall appear in any of the above instances adjacent to or
4 immediately following the display, description, or price of the non-Reformulated Covered Product
5 for which it is given in the same type size or larger than the non-Reformulated Covered Product
6 description text:

7 WARNING: This product contains chemicals known
8 to the State of California to cause cancer
 and birth defects and other reproductive harms.

9 Alternatively, the designated symbol may appear adjacent to or immediately following the
10 display, description, or price of the non-Reformulated Covered Product for which a warning is being
11 given, provided that the following warning statement also appears elsewhere on the same web page,
12 as follows:

13 WARNING: This product contains chemicals known
14 to the State of California to cause cancer
15 and birth defects and other reproductive harms.

16 **2.3 Adoption of New Warning Regulations**

17 Should new warning regulations be adopted, Identity Group shall be deemed to be in
18 compliance with the new requirements by adhering to section 2.2 of this Consent Judgment.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Civil Penalty Payments**

21 Pursuant to Health and Safety Code section 25249.7(b), Identity Group has been assessed a
22 total of \$14,000 in civil penalties in accordance with this Section. Each civil penalty payment will be
23 allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five
24 percent (75%) of the funds remitted to the California Office of Environmental Health Hazard
25 Assessment (“OEHHA”) by Held.

26 **3.1.1 Initial Civil Penalty**

27 Within five days of the Effective Date, Identity Group shall make an initial civil penalty
28 payment of \$4,000. Identity Group shall provide its payment in a single check made payable to

1 “Anthony E. Held, Client Trust Account” to be delivered to the address provided in Section 3.3.1,
2 below. Held and his counsel will ensure the appropriate 75% is remitted to OEHHA.

3 **3.1.2 Final Civil Penalty**

4 On or before December 31, 2016, Identity Group shall make a final civil penalty
5 payment of \$10,000 to Held. Pursuant to title 11 California Code of Regulations, section 3203(c),
6 Held agrees that the final civil penalty payment shall be waived in its entirety if, no later than
7 December 15, 2016, an officer of Identity Group provides Held with written certification that all of
8 the Covered Products purchased for sale or manufactured for sale in California as of the date of such
9 certification are Reformulated Products as defined by Section 2.1, and that Identity Group will
10 continue to offer only Reformulated Products in California in the future. The option to certify
11 reformulation in lieu of making the final civil penalty payment required by this Section is a material
12 term and time is of the essence.

13 **3.2 Reimbursement of Fees and Costs**

14 The parties acknowledge that Held and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, Identity Group expressed a desire to resolve Held’s fees
18 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held
19 and his counsel under general contract principles and the private attorney general doctrine codified at
20 California Code of Civil Procedure section 1021.5 for all work performed through the court’s entry of
21 this Consent Judgment. Under these legal principles, Identity Group shall reimburse Held and his
22 counsel \$29,500 for fees and costs incurred, and yet to be incurred, as a result of, among other things,
23 investigating, bringing this matter to the attention of Identity Group’s management, negotiating a
24 settlement in the public interest, complying with all reporting obligations, and securing the approval
25 of this Consent Judgment in court. Identity Group shall issue a check to “The Chanler Group” within
26 five days after the Effective Date, to the address listed in Section 3.3 above.

1 **3.3 Payment Procedures**

2 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
3 this Consent Judgment are to be delivered within five (5) days of the Effective Date according to the
4 following subsections.

5 **3.3.1 Payment Address**

6 All payments and tax documentation for OEHHA, Held, and his counsel shall be
7 delivered to:

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

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Held’s Public Release of Proposition 65 Claims Against Identity Group**

13 Held, acting on his own behalf and in the public interest, releases Identity Group and its
14 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
15 attorneys, successors and assignees (“Releasees”) and each entity to whom it directly or indirectly
16 distributes or sells the Covered Products, including but not limited to its downstream distributors,
17 wholesalers, customers, retailers (including Hobby Lobby Stores, Inc.), franchisers, cooperative
18 members, licensors, and licensees (“Downstream Releasees”) for violations arising under
19 Proposition 65 for unwarned exposures to DEHP from the Covered Products sold by Identity Group
20 prior to the Effective Date, as set forth in the Notice and the Complaint.

21 **4.2 Held’s Individual Release of Claims**

22 Held, in his individual capacity only and *not* in his representative capacity, also provides a
23 release to Identity Group, Releasees, and Downstream Releasees which shall be effective as a full and
24 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
26 kind, arising out of alleged or actual exposures from the Covered Products sold or distributed for sale
27 by Identity Group before the Effective Date.
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1 **4.3 Identity Group's Release of Held**

2 Identity Group, on its own behalf, and on behalf of its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held
4 and his attorneys and other representatives, for any and all actions taken or statements made by
5 Held and his attorneys and other representatives, whether in the course of investigating claims,
6 otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered
7 Products.

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 (1) year
11 after it has been fully executed by the Parties. It is the intention of the Parties that the Court approve
12 this Consent Judgment.

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

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 For Identity Group:

6 Malcolm C. Weiss, Esq. and Gerard Olson, Esq.
7 Hunton & Williams, LLP
8 550 South Hope Street
Suite 2000
Los Angeles, California 90071

9 For Held:

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

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

17 This Consent Judgment may be executed in counterparts and by facsimile or portable
18 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
19 taken together, shall constitute one and the same document. Any photocopy of the executed Consent
20 Judgment shall have the same force and effect as the originals.

21 **10. POST EXECUTION ACTIVITIES**

22 Held agrees to comply with the reporting form requirements referenced in Health and Safety
23 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
24 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
25 furtherance of obtaining such approval, Held and Identity Group agree to mutually employ their best
26 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
27 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"

1 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
2 and supporting the motion for judicial approval.

3 **11. MODIFICATION**

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

7 **12. INTEGRATION**

8 This Consent Judgment constitutes the entire agreement between the parties with respect to
9 the subject matter hereof and may not be amended or modified except in writing.

10 **13. AUTHORIZATION**

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

13 **AGREED TO:**

AGREED TO:

14 **APPROVED**
15 Date: By Anthony Held at 3:50 pm, Oct 29, 2015

Date: 10/29/15

16 By: Anthony E. Held
17 ANTHONY E. HELD, PH.D., P.E.

18 By: Brad Wolf
19 Brad Wolf, President
20 Identity Group Holdings Corp.

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