

1 Josh Voorhees, State Bar No. 241436
Jennifer Henry, State Bar No. 208221
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 ANTHONY E. HELD, PHD., P.E.

ENDORSED
FILED
ALAMEDA COUNTY

MAR 26 2012

CLERK OF THE SUPERIOR COURT
By W.S.G. Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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13 ANTHONY E. HELD, PhD., P.E.,

14 Plaintiff,

15 v.

16 IMEX DISCOVERY RESOURCES, INC.;;
17 and DOES 1-150, inclusive,

18 Defendants.
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Case No. RG11605516

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: March 21, 2012

Time: 3:00 p.m.

Dept.: 18

Judge: Hon. Marshall Whitley

Reservation No. R-1241776

1 Plaintiff, Anthony E. Held, PhD., P.E., and defendant Imex Discovery Resources, Inc.,
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving the Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, Judgment is entered in
7 accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation
8 of the parties the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.

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11 **IT IS SO ORDERED.**

12
13 Dated: 3 26 12

Marshall Whitley

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Jennifer Henry, State Bar No. 208221
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 IMEX DISCOVERY RESOURCES, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. RG11605516

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

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CONSENT JUDGMENT

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 (“Dr. Held”), and defendant Imex Discovery Resources, Inc. (“Defendant”), with Dr. Held and
5 Defendant 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 Defendants**

11 Defendant employs ten or more persons and are persons in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Defendant has sold in the State of California vinyl toiletry cases/bags
16 containing one or more of Di(2-ethylhexyl)phthalate (“DEHP”) and Di-n-butyl phthalate (“DBP”).
17 DEHP and DBP are listed pursuant to Proposition 65 as chemicals known to the State of California to
18 cause birth defects or other reproductive harm. DEHP and DBP are also referred to herein as the
19 “Listed Chemicals.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as vinyl toiletry
22 cases/bags containing one or more of the Listed Chemicals including, but not limited to, *Coppertone*
23 *Sun Essentials, Item #548510 (#0 41100 70440 5)*, that are sold, manufactured or distributed by
24 Defendant in California. All such items shall be referred to herein as the “Products.”

25 **1.6 Notice of Violation**

26 On or about March 31, 2011, Dr. Held served Defendant and various public enforcement
27 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Defendant
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1 and such public enforcers with notice that alleged Defendant was in violation of Proposition 65 for
2 failing to warn consumers and customers that the Products exposed users in California to DEHP.

3 On or about November 17, 2011, Dr. Held served Defendant and various public enforcement
4 agencies with a Supplemental Notice that provided Defendant and such public enforcers with notice
5 that alleged Defendant was in violation of Proposition 65 for failing to warn consumers and
6 customers that the Products exposed users in California to DEHP and/or DBP (collectively
7 "Notices.").

8 **1.7 Complaint**

9 On or before November 22, 2011, Dr. Held, who alleges that he was and is acting in the
10 interest of the general public in California, filed the instant action in the Alameda County Superior
11 Court ("Complaint"), naming Defendant as defendant and alleging violations of Proposition 65 by
12 Defendant based on the alleged exposures to DEHP and/or DBP contained in the Products it
13 manufactured, distributed, and/or offered for sale in California. Following the expiration of more
14 than 66 days after Plaintiff's service of the Supplemental Notice, and upon entry of this Consent
15 Judgment, the Complaint shall be deemed amended *nunc pro tunc* to include the vinyl toiletry
16 cases/bags containing DBP sold, manufactured or distributed by Defendant in California and the
17 violations of Proposition 65 alleged in the Supplemental Notice, provided that no Public Enforcer has
18 diligently prosecuted any of the allegations set forth in the Supplemental Notice

19 **1.8 No Admission**

20 Defendant denies the material, factual, and legal allegations contained in the Notices and
21 Complaint and maintain that all of the products that it has sold in California, including the Products,
22 has been, and is, in compliance with all laws. Nothing in this Consent Judgment shall be construed as
23 an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law; nor
24 shall compliance with this Consent Judgment constitute or be construed as an admission by
25 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
26 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
27 responsibilities, and duties of Defendant under this Consent Judgment.

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1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
4 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 21,
8 2011.

9 **2. INJUNCTIVE RELIEF**

10 **2.1 Reformulation Commitment**

11 Starting on November 21, 2011 (the "Compliance Date"), Defendant shall not manufacture,
12 distribute, sell or offer for sale in California any Product unless it is a "Reformulated Product." For
13 purposes of this Consent Judgment, a Reformulated Product shall mean that each Accessible
14 Component of each Product contains no more than 0.1 percent (1,000 parts per million) of each of the
15 Listed Chemicals when analyzed pursuant to Environmental Protection Agency testing
16 methodologies 3580A and 8270C. For the purposes of this Section 2.1, "Accessible Component"
17 means a polyvinyl chloride or other soft plastic vinyl or synthetic leather component of a Product that
18 could be touched by a person during reasonably foreseeable use.

19 **3. MONETARY PAYMENTS**

20 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

21 Defendant shall be assessed a civil penalty totaling \$60,000 in combined penalty payments
22 and credits. Due to Defendant's cooperation in the resolution of this action and its commitment to
23 only offer Reformulated Products pursuant to Section 2.1, above, Dr. Held agrees to apply an
24 automatic credit of \$45,000 to the total civil penalty. Therefore, Defendant agrees to pay the sum of
25 \$15,000. Defendant shall make a payment of \$15,000 to be apportioned in accordance with Health
26 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
27 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
28 remaining 25% of these penalty monies earmarked for Dr. Held.

1 **3.2 Reimbursement of Plaintiff's Fees and Costs**

2 The Parties acknowledge that Dr. Held and his counsel offered to resolve the non-monetary
3 terms of this dispute before reaching terms on the amount of attorneys' fees and costs to be
4 reimbursed to them, thereby leaving this fee issue to be resolved after the non-monetary material
5 terms of the agreement had been settled. The Parties then agreed to resolve the fee and cost issue
6 shortly after the other settlement terms had been tentatively finalized, subject to agreement on fees
7 and costs. The Parties then attempted to (and did) reach an accord on the compensation due to Dr.
8 Held and his counsel under general contract principles and the private attorney general doctrine
9 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
10 except fees that may be incurred on appeal. Under these legal principles, Defendant shall pay the
11 amount of \$33,500 for fees and costs incurred investigating, litigating and enforcing this matter,
12 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the
13 Court's approval of this Consent Judgment.

14 **3.3 Payment Procedures**

15 **3.3.1 Funds Held In Trust**

16 All payments required by Sections 3.1 and 3.2 shall delivered on or before December 31,
17 2011, to either The Chanler Group or the attorney of record for Defendant, and shall be held in trust
18 pending the Court's approval of this Consent Judgment.

19 Payments delivered to The Chanler Group shall be made payable, as follows:

- 20 (a) One check made payable to "The Chanler Group in Trust for OEIHA" in the
21 amount of \$11,250;
- 22 (b) One check made payable to "The Chanler Group in Trust for Dr. Anthony
23 Held" in the amount of \$3,750; and
- 24 (c) One check made payable to "The Chanler Group in Trust" in the amount of
25 \$33,500.

26 Payments delivered to Barg Coffin Lewis & Trapp, LLP shall be made payable, as follows:

- 27 (a) One check made payable to "Barg Coffin Lewis & Trapp, LLP in Trust for
28 OEIHA" in the amount of \$11,250;

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- (b) One check made payable to "Barg Coffin Lewis & Trapp, LLP in Trust for Dr. Anthony Held in the amount of \$3,750; and
- (c) One check made payable to "Barg Coffin Lewis & Trapp, LLP in Trust for The Chanler Group" in the amount of \$33,500.

If Defendant elects to deliver payments to its attorney of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the funds have been deposited in a trust account; and (b) within two days of the date of the hearing on which the Court approves the Consent Judgment, deliver the payment to The Chanler Group in three separate checks, as follows:

- (a) One check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$11,250;
- (b) One check to "The Chanler Group in Trust for Dr. Anthony Held" in the amount of \$3,750; and
- (c) One check to "The Chanler Group" in the amount of \$33,500.

3.3.2 Issuance of 1099 Forms

After the Consent Judgment has been approved and the settlement funds have been transmitted to plaintiff's counsel, Defendant shall issue three separate 1099 forms, when reasonably available, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$11,250;
- (b) The second 1099 shall be issued to Dr. Held in the amount of \$3,750, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$33,500.

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1 **3.3.3 Payment Address**

2 All payments to the Chanler Group shall be delivered to the following payment address:

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

8 **4. CLAIMS COVERED AND RELEASE OF ALL CLAIMS**

9 **4.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

10 This Consent Judgment is a full, final and binding resolution between Dr. Held, on behalf of
11 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been
12 asserted by Dr. Held against the Defendant, and its parent companies, corporate affiliates,
13 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents,
14 and employees, and each entity to or through whom Defendant directly or indirectly sells Product,
15 including, but not limited to, its past and current downstream distributors, wholesalers, licensors,
16 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
17 companies, corporate affiliates, and subsidiaries, including but not limited to Merck & Co., Inc. and
18 its subsidiaries ("Downstream Releasees") and the Downstream Releasees' respective past and
19 current officers, directors, principals, partners, members, attorneys, representatives, shareholders,
20 agents, and employees, and sister and parent entities (Defendant and Downstream Releasees are
21 collectively referred to herein as "Releasees"), based on their failure to warn about alleged exposures
22 to the Listed Chemicals contained in the Products that were manufactured, distributed, sold or offered
23 for sale by the Defendant.

24 **4.2 Dr. Held's Public Release of Defendant and Downstream Releasees**

25 In further consideration of the promises and agreements herein contained, including without
26 limitation the payments to be made pursuant to Section 3 above, Dr. Held, on behalf of himself, his
27 past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of
28 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any
 form of legal action and releases all claims, including, without limitation, all actions, causes of
 action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses 6

1 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature
2 whatsoever, whether fixed or contingent, at law or in equity (collectively "Claims"), against
3 Releasees. This release is limited to those Claims that arise under Proposition 65 with respect to the
4 Listed Chemicals contained in the Products. The Parties further agree that this release shall not
5 extend upstream to any entities that manufactured the Products or any component parts thereof, or to
6 any upstream distributors or suppliers who sold Products or any component parts thereof to either
7 Defendant.

8 Compliance with the terms of this Consent Judgment by Defendant constitutes compliance
9 with Proposition 65 with respect to the Listed Chemicals in the Defendant's Products, including
10 without limitation such Products distributed and/or sold by Releasees.

11 **4.3 Dr. Held's Individual Release of Claims.**

12 Dr. Held also, in his individual capacity only and *not* in his representative capacity, provides a
13 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
14 Claims of Dr. Held of any nature, character or kind, whether known or unknown, suspected or
15 unsuspected, limited to and arising out of alleged or actual exposures to the Listed Chemicals in the
16 Products manufactured, distributed or sold by the Defendant.

17 **4.4 Defendant's Release of Dr. Held**

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

23 **5. COURT APPROVAL**

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

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

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

14 **8. NOTICES**

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

19 For Defendant:

20 Richard C. Coffin
21 Barg Coffin Lewis & Trapp, LLP
22 350 California Street, 22nd Floor
San Francisco, CA 94104-1435

23 For Dr. Held:

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

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

1 **9. 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 **10. 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 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
10 noticed motion is required to obtain judicial approval of this Consent Judgment. Dr. Held shall make
11 best efforts to file a Motion to Approve the Consent Judgment and supporting papers, and shall make
12 best efforts to file such motion and supporting papers no later than forty (40) days after the Complaint
13 is filed. In furtherance of obtaining such approval, Dr. Held and Defendant and their respective
14 counsel agree to mutually employ their best efforts, including, at a minimum, cooperating on the
15 drafting and filing of any papers in support of the required motion for judicial approval (including
16 any Reply Memorandum that may be needed), to support the entry of this agreement as a Consent
17 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. Defendant
18 shall cooperate with Dr. Held in providing any required additional information or representations
19 necessary regarding the Supplemental Notice and Certificate of Merit concerning DBP in the
20 Products.

21 **12. MODIFICATION**

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

25 **13. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
28 commitments, and understandings related hereto. No representations, oral or otherwise, express or

1 implied, other than those contained herein have been made by any party hereto. No other agreements
2 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
3 parties.

4 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

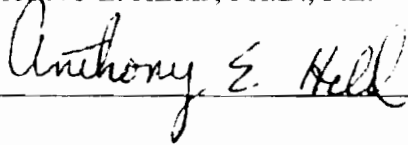
5 This Consent Judgment may be executed in counterparts and by facsimile or portable document
6 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
7 constitute one and the same documents

8 **15. 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 hereof.

11 **AGREED TO:**

12 ANTHONY E. HELD, PH.D., P.E.

13 
14 _____

15 Date: 11/23/11 _____

AGREED TO:

IMEX DISCOVERY RESOURCES, INC.

By: _____

Its: _____

Date: _____

1 implied, other than those contained herein have been made by any party hereto. No other agreements
2 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
3 parties.

4 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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6 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
7 constitute one and the same documents

8 **15. 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 hereof.

11 **AGREED TO:**

12 ANTHONY E. HELD, PH.D., P.E.

11 **AGREED TO:**

12 IMEX DISCOVERY RESOURCES, INC.

13 By: 
14 _____

15 Its: President

16 Date: _____

16 Date: 11/23/11

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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG11605516
JUDGMENT

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on 3/27/12.

Executive Officer/Clerk of the Superior Court

By  Deputy Clerk

Jennifer Henry
The Chanler Group
2560 Ninth St.
Parker Plaza, Suite 214
Berkeley, Ca 94710

Joshua A. Bloom
Barg Coffin Lewis & Trapp, LLP
350 California St., 22nd Floor
San Francisco, Ca 94104