

1 Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
2 Jennifer Henry, State Bar No. 208221
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 THE COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, Ph.D., P.E.,
14 Plaintiff,
15 v.
16 BLOCK AND COMPANY, INC.; MMF
17 INDUSTRIES; and DOES 1-150, inclusive,
18 Defendants.

Case No. RG11590954
**[PROPOSED] CONSENT
JUDGMENT**
Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E. and Block and Company, Inc. and MMF**
3 **Industries**

4 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
5 (hereinafter “Dr. Held”) and Block and Company, Inc. and MMF Industries (hereinafter
6 “Defendants”). Dr. Held and Defendants are collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

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

15 **1.4 General Allegations**

16 Dr. Held alleges that Defendants sold in the State of California wallets containing di(2-
17 ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to
18 the State of California to cause birth defects and other reproductive harm. DEHP is also referred to
19 herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are wallets (such as, but not limited
22 to, cash-carry wallets or pouches) containing DEHP, including, but not limited to *MMF Industries*
23 *Multi-Purpose Wallet, #234110638 (#0 78541 18138 0)*, manufactured, distributed or sold by
24 Defendants in California (“Products”).

25 **1.6 Notice of Violation**

26 On March 31, 2011, Dr. Held served Defendants and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” that provided Defendants and such public
28

1 enforcers with notice that alleged that Defendants were in violation of Proposition 65 for failing to
2 warn consumers and customers that the Products exposed users in California to DEHP.

3 **1.7 Complaint**

4 On or about August 15, 2011, Dr. Held, who alleges that he was and is acting in the interest of
5 the general public in California, filed a complaint in the Alameda Superior Court (the “Complaint”),
6 naming Block and Company, Inc. and MMF Industries as defendants and alleging violations of
7 Proposition 65 by Defendants based on the alleged exposures to DEHP contained in the Products
8 manufactured, distributed, and/or offered for sale in California by Defendants.

9 **1.8 No Admission**

10 Defendants deny the material factual and legal allegations contained in Dr. Held’s Notice and
11 Complaint and maintain that all Products that they sold in California, including the Products, have
12 been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as
13 an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law; nor
14 shall compliance with this Consent Judgment constitute or be construed as an admission by
15 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
16 denied by Defendants. However, this section shall not diminish or otherwise affect the obligations,
17 responsibilities and duties of Defendants under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in
21 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 15,
25 2011.

26 **2. INJUNCTIVE RELIEF**

27 **2.1 Reformulation Commitment**

28 Starting on December 31, 2011, Defendants shall not import or manufacture any Product that

1 will be sold or offered for sale to California citizens unless they are “Reformulated Products.” For
2 purposes of this Consent Judgment, Reformulated Products shall mean Products containing DEHP in
3 concentrations less than 0.1 percent (1,000 parts per million) in each accessible component when
4 analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any
5 state or federal agency to assess the DEHP content by weight of a solid substance.

6 **3. MONETARY PAYMENTS**

7 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

8 Pursuant to Health & Safety Code § 25249.7(b) the total civil penalty assessed shall be
9 \$8,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code
10 §25249.12(c) & (d), with 75% of these funds remitted to the State of California’s Office of
11 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% to Dr. Held.

12 Defendants shall issue two separate checks for the penalty payment: (a) one check made
13 payable to “The Chanler Group in Trust for Office of Environmental Health Hazard Assessment” in
14 the amount of \$6,000, representing 75% of the total penalty; and (b) one check to “The Chanler
15 Group in Trust for Anthony Held” in the amount of \$2,000, representing 25% of the total penalty.
16 Two separate 1099s shall be issued for the above payments: (a) Office of Environmental Health
17 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony
18 Held, whose address and tax identification number shall be furnished, upon request, three calendar
19 days before payment is due. Payment shall be delivered within ten days of the Effective Date, at the
20 following address:

21 THE CHANLER GROUP
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
Berkeley, CA 94710

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

26 **4.1 Attorney Fees and Costs**

27 The Parties reached an accord on the compensation due to Held and his counsel under general
28 contract principles and the private attorney general doctrine codified at California Code of Civil

1 Procedure §1021.5, for all work performed in this matter. Under these legal principles, Defendants
2 shall pay the total of \$30,000 for fees and costs incurred as a result of investigating, bringing this
3 matter to Defendants' attention, and negotiating a settlement in the public interest. Defendants shall
4 make a separate check payable to "The Chanler Group," issue a separate 1099 for fees and costs
5 (EIN: 94-3171522), and deliver payment within ten days of the Effective Date, to the following
6 address:

7 THE CHANLER GROUP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Dr. Held's Release of Defendants**

12 In further consideration of the promises and agreements herein contained, and for the
13 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
14 current agents, representatives, attorneys, including, without limitation, The Chanler Group,
15 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
16 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
17 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,
18 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
19 to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether fixed or
20 contingent, at law or in equity (collectively "Claims"), that were brought or could have been brought
21 against Defendants, its subsidiaries and affiliates, and each of their past and current downstream
22 customers, distributors, wholesalers, licensors, licensees, retailers, or any other person in the course
23 of doing business, and the successors and assigns of any of them, who may use, maintain,
24 manufacture, distribute, advertise, market or sell Products, and the officers, directors, managers,
25 employees, members, shareholders, agents, insurers and representatives of each of them (collectively
26 "Releasees") in this matter limited to and arising out of the alleged exposure to the Listed Chemical
27 from the Products distributed or sold by Defendants. The Parties further understand and agree that
28 this release shall not extend upstream to any third parties that manufactured the Products or any

1 component parts thereof, or any distributors or suppliers who sold the Products or any component
2 parts thereof to Defendants.

3 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
4 future, concerning compliance by Defendants and its Releasees with the requirements of Proposition
5 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by
6 Defendants.

7 **5.2 Defendants' Release of Dr. Held**

8 Defendants waive any and all claims against Dr. Held, his attorneys and other representatives,
9 for any and all actions taken or statements made (or those that could have been taken or made) by Dr.
10 Held and his attorneys and other representatives, whether in the course of investigating Claims or
11 otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to
12 the Products.

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and shall
15 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
16 has been fully executed by all Parties, in which event any monies that have been provided to Dr. Held
17 or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within fifteen (15) days
18 after receiving written notice from Defendants that the one-year period has expired.

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
26 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendants
27 may provide written notice to Dr. Held of any asserted change in the law, and shall have no further
28 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are

1 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendants from any
2 obligation to comply with any pertinent state or federal toxics control laws.

3 **9. NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant to
5 this Consent Judgment shall be sent by: (i) personal delivery; (ii) first-class, registered or certified
6 mail, return receipt requested; or (iii) overnight courier on any party by the other party at the
7 following addresses:

8 For Defendants:

9 Gregory Carlson, President
10 Block and Company, Inc.
11 MMF Industries
1111 Wheeling Rd.
Wheeling, IL 60090

12 with a copy to:

13 George Gigounas
14 DLA Piper LLP
555 Mission St., Suite 2400
San Francisco, CA 94105

15 For Dr. Held:

16 Proposition 65 Coordinator
17 The Chanler Group
2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710

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

21 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

22 This Consent Judgment may be executed in counterparts and by facsimile, or .pdf signature,
23 each of which shall be deemed an original, and all of which, when taken together, shall constitute one
24 and the same document.

25 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Dr. Held agrees to comply with the reporting form requirements referenced in California
27 Health & Safety Code § 25249.7(f).
28

1 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
3 noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
4 obtaining such approval, Dr. Held and Defendants and their respective counsel agree to mutually
5 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
6 approval of the Consent Judgment by the Court in a timely manner. For purposes of this section, best
7 efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of
8 the required motion for judicial approval.

9 **13. MODIFICATION**

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

13 The Attorney General shall be served with notice of any proposed modification to this
14 Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Held shall
15 be entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5 if
16 Defendants seeks to modify the terms of this Consent Judgment.

17 **14. AUTHORIZATION**

18 The undersigned are authorized to execute this Consent Judgment and have read, understood,
19 and agree to all of the terms and conditions hereof.

20 **AGREED TO:**

21 *Anthony E Held*
22 _____
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

By: _____
BLOCK AND COMPANY, INC.

23 **APPROVED**

By Tony Held at 11:18 pm, Aug 16, 2011

24 Date: _____

Date: _____

25 **AGREED TO:**

26 _____
27 By:
28 MMF INDUSTRIES

12. **ADDITIONAL POST EXECUTION ACTIVITIES**

The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and Defendants 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 section, best efforts shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the required motion for judicial approval.

13. **MODIFICATION**

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

The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. Held shall be entitled to his reasonable fees and costs incurred in the modification process under CCP §1021.5 if Defendants seeks to modify the terms of this Consent Judgment.

14. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

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




By: Gregory A. Carlson
BLOCK AND COMPANY, INC.

Date: _____

Date: 8/18/11

AGREED TO:



By: Gregory A. Carlson
MMF INDUSTRIES

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Date: 8/18/11

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT