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Clifford A. Chanler, State Bar No. 135534  
David S. Lavine, State Bar No. 166744  
HIRST & CHANLER LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
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Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

**FILED**  
Superior Court of California  
County of San Francisco

OCT 27 2009

GORDON PARK-LI, Clerk  
BY: Anthony E. Held  
Deputy Clerk

FILED AUG 27 2009 OCT 08 2009

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

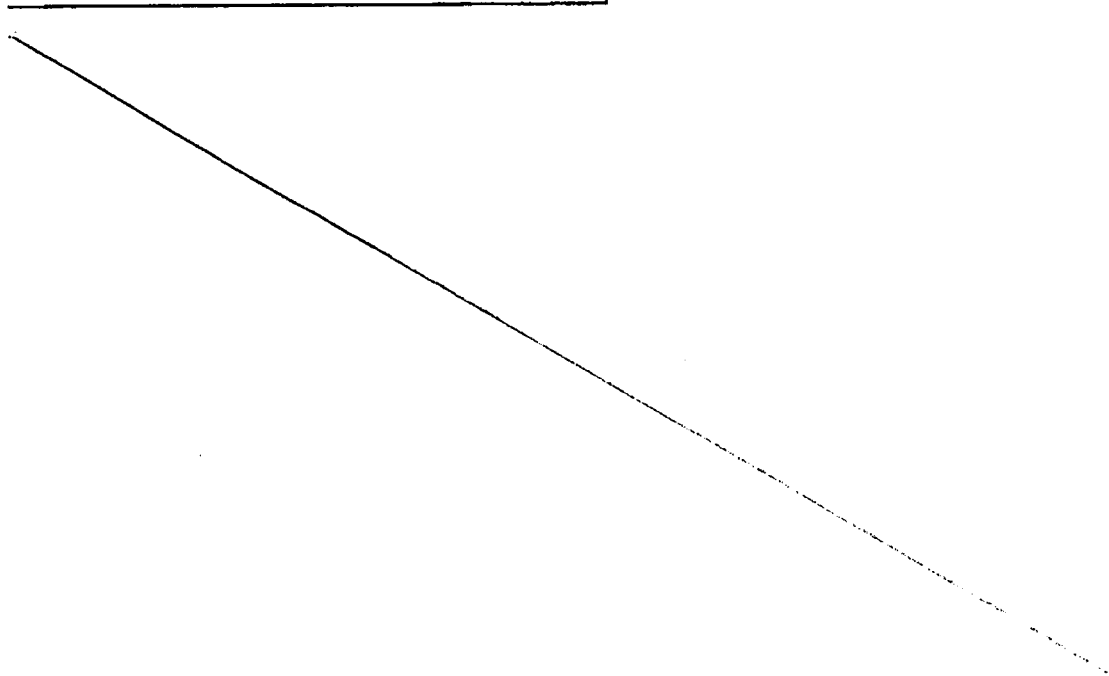
MEADWESTVACO CORPORATION, *et al.*,

Defendants.

Case No. CGC-09-488165

<sup>(al)</sup>  
**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF CONSENT JUDGMENT**

Date: October 2, 2009  
Time: 9:30 a.m.  
Dept.: 301  
Judge: Hon. Peter J. Busch



(al)

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In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant MEADWESTVACO CORPORATION having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed] Consent Judgment entered into by the parties, and following issuance of an order approving this Proposition 65 settlement agreement and entering the Consent Judgment on October 2, 2009.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure §664.6, judgment is entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1.

**IT IS SO ORDERED.**

Dated: October 27, 2009

*Paul H. Alvarado*  
@  
JUDGE OF THE SUPERIOR COURT  
PAUL H. ALVARADO

# 488165  
HELD v. MEADWESTVACO  
CORP.

# **Exhibit 1**

1 Clifford A. Chanler, State Bar No. 135534  
2 Daniel Bornstein, State Bar No. 181711  
3 HIRST & CHANLER LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710 2565  
7 Telephone: (510) 848 8880  
8 Facsimile: (510) 848 8118  
9  
10 Attorneys for Plaintiff  
11 ANTHONY E. HELD, Ph.D., P.E.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

11 ANTHONY E. HELD, PH.D., P.E., ) Case No. CGC-09-488165  
12 Plaintiff, )  
13 ) (PROPOSED)  
14 v. ) CONSENT JUDGMENT  
15 MEADWESTVACO CORPORATION, et al., )  
16 Defendant. )  
17 )  
18 )

19 1. INTRODUCTION

20 1.1 Anthony E. Held, Ph.D., P.E., and MeadWestvaco Corporation

21 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,  
22 P.E. ("Dr. Held" or "Plaintiff") and Defendant MeadWestvaco Corporation ("MWV" or  
23 "Defendant"), with Plaintiff and Defendant collectively referred to as the "parties."

24 1.2 Plaintiff

25 Dr. Held is an individual residing in the State of California who seeks to promote  
26 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating  
27 hazardous substances contained in consumer products.

1           **1.3 Defendant**

2           MWV employs 10 or more persons and is a person in the course of doing business for  
3 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
4 Safety Code § 25249.6 *et seq.* (Proposition 65).

5           **1.4 General Allegations**

6           Dr. Held alleges that MWV has manufactured, distributed and/or sold children's vinyl  
7 zipper pulls containing di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65  
8 warnings. DEHP is a phthalate that is listed as a reproductive and developmental toxicant  
9 pursuant to Proposition 65 and is referred to hereinafter as the "Listed Chemical."

10           **1.5 Notice of Violation**

11           On January 26, 2009, Dr. Held served MWV, Kmart Corporation ("Kmart"), and various  
12 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the  
13 "Notice") that provided public enforcers and these entities with notice of alleged violations of  
14 Health & Safety Code § 25249.6 for failing to warn consumers that children's vinyl zipper pulls  
15 that MWV manufactured, distributed and/or sold exposed users in California to DEHP.  
16 Following receipt of the Notice, on or about February 11, 2009, Kmart stopped selling the vinyl  
17 zipper pull products referenced in the Notice. To the best of the parties' knowledge, no public  
18 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

19           **1.6 Complaint**

20           On May 7, 2009, Dr. Held, acting in the interest of the general public in California, filed a  
21 complaint ("Complaint" or "Action") in the Superior Court in and for the County of San  
22 Francisco against MWV, Kmart and Does 1 through 150, alleging violations of Health & Safety  
23 Code § 25249.6 based on the alleged exposures to DEHP contained in children's vinyl zipper  
24 pulls manufactured, distributed and/or sold by MWV.

25           **1.7 No Admission**

26           MWV denies the material, factual and legal allegations contained in Dr. Held's Notice and  
27 Complaint and maintains that all Covered Products it has manufactured, distributed and/or sold in  
28 California have been and are in compliance with all applicable laws. Nothing in this Consent

1 Judgment shall be construed as an admission by MWV of any fact, finding, issue of law, or  
2 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as  
3 an admission by MWV of any fact, finding, conclusion, issue of law, or violation of law, such  
4 being specifically denied by MWV. However, this Section shall not diminish or otherwise affect  
5 MWV's obligations, responsibilities, and duties under this Consent Judgment.

6 **1.8 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
8 jurisdiction over MWV as to the allegations contained in the Complaint, that venue is proper in  
9 the County of San Francisco and that this Court has jurisdiction to enter and enforce the  
10 provisions of this Consent Judgment.

11 **1.9 Product Description**

12 The term "Covered Products" means school supplies manufactured, distributed, and/or  
13 sold by MWV that contain vinyl zipper pulls.

14 **1.10 Effective Date**

15 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
16 consent judgment is entered by the court.

17 **2. INJUNCTIVE RELIEF: REFORMULATION**

18 **2.1** Commencing on August 7, 2009, MWV shall not sell, ship, or offer to be shipped  
19 for sale in California any Covered Product with a vinyl zipper pull that contains more than 1,000  
20 parts per million ("ppm") of DEHP.

21 **2.2** Defendant may employ any methodology accepted by a federal or state agency for  
22 establishing DEHP content in Covered Products.

23 **3. MONETARY PAYMENTS**

24 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

25 **3.1.1** In settlement of all claims related to the Covered Products and Listed  
26 Chemical referred to in the Complaint, and this Consent Judgment pursuant to Health & Safety  
27 Code § 25249.7(b), MWV shall pay \$5,000.00 in civil penalties.

28

1                   3.1.2 Civil penalties are to be apportioned in accordance with California Health  
2 & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of  
3 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty  
4 remitted to Anthony Held as provided by California Health & Safety Code §25249.12(d). MWV  
5 shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &  
6 Chanler LLP in Trust for OEHHA" in the amount of \$3,750.00, representing 75% of the total  
7 penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of  
8 \$1,250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the  
9 above-payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and  
10 (b) Anthony Held, whose information shall be provided five calendar days before the payment is  
11 due.

12                   3.1.3 Payment shall be delivered to Dr. Held's counsel within five business days  
13 of the Effective Date, at the following address:

14                   Hirst & Chanler LLP  
15                   Attn: Proposition 65 Controller  
16                   2560 Ninth Street  
17                   Parker Plaza, Suite 214  
18                   Berkeley, CA 94710

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

20                   **4.1 Attorney Fees and Costs**

21                   Pursuant to the private attorney general doctrine codified at California Code of Civil  
22 Procedure (C.C.P.) § 1021.5, MWV shall reimburse Dr. Held and his counsel a total of  
23 \$40,000.00 for fees and costs incurred as a result of investigating, bringing this matter to MWV's  
24 attention, and litigating and negotiating a settlement in the public interest. MWV shall issue a  
25 separate 1099 for fees and costs (EIN: 20-3929984) and shall make the check payable to "Hirst  
26 & Chanler LLP" and shall be delivered within five business days of the Effective Date.

27                   Hirst & Chanler LLP  
28                   Attn: Proposition 65 Controller  
29                   2560 Ninth Street  
30                   Parker Plaza, Suite 214  
31                   Berkeley, CA 94710

1     **5.     CLAIMS COVERED AND RELEASE**

2             **5.1     Claims Covered**

3                     5.1.1     This Consent Judgment is a full, final, and binding resolution between Dr.  
4     Held, on behalf of himself, his past and current agents, representatives, attorneys, successors,  
5     and/or assignees, and the general public, and MWV, its parents, shareholders, divisions,  
6     subdivisions, subsidiaries, affiliates, partners, sister companies, employees, directors, insurers,  
7     and attorneys and their successors and assigns ("Defendant Releasees"), and all entities to whom  
8     they have distributed or sold, or may hereafter distribute or sell, Covered Products, including but  
9     not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members,  
10    and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any  
11    other statutory or common law claims that have been or could have been asserted in the  
12    Complaint against MWV, Defendant Releasees, and Downstream Defendant Releasees  
13    (collectively "Releasees"), regarding the presence of, or the failure to warn about exposure to, the  
14    Listed Chemical in Covered Products manufactured, distributed, or sold by MWV prior to the  
15    Effective Date.

16                    5.1.2     Compliance with the terms of this Consent Judgment by MWV and  
17    Defendant Releasees after the Effective Date constitutes compliance with Proposition 65  
18    regarding the presence of, and the failure to warn about exposure to, the Listed Chemical in  
19    Covered Products manufactured, distributed or sold by MWV after the Effective Date.

20             **5.2     Dr. Held's Release of MWV, and its Chain of Distribution**

21                    5.2.1     In further consideration of the promises and agreements herein contained,  
22    the injunctive relief commitments set forth in Section 2, and for the payments to be made  
23    pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and current agents,  
24    representatives, attorneys, successors, and/or assignees, and the general public, hereby waives  
25    with respect to Covered Products all rights to institute or participate in, directly or indirectly, any  
26    form of legal action and releases all claims, including, without limitation, all actions, and causes  
27    of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
28    penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and



1 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
2 (collectively "claims"), against Releasees that arise under Proposition 65 or any other statutory or  
3 common law claims that were or could have been asserted in the public interest, as such claims  
4 relate to the Releasees' alleged failure to warn about exposures to the Listed Chemical contained  
5 in the Covered Products.

6 5.2.2 Dr. Held also, in his individual capacity only and not in his representative  
7 capacity, provides a general release which shall be effective as a full and final accord and  
8 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
9 damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind,  
10 known or unknown, suspected or unsuspected, against Releasees, arising out of the subject matter  
11 of the Action or related to alleged exposure to DEHP from products manufactured, distributed, or  
12 sold by MWV. Dr. Held acknowledges that he is familiar with Section 1542 of the California  
13 Civil Code, which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
16 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
17 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
18 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
19 DEBTOR.

20 Dr. Held, in his individual capacity only and *not* in his representative capacity, expressly waives  
21 and relinquishes any and all rights and benefits which he may have under, or which may be  
22 conferred on him by, the provisions of Section 1542 of the California Civil Code as well as under  
23 any other state or federal statute or common law principle of similar effect, to the fullest extent  
24 that he may lawfully waive such rights or benefits pertaining to the Releasees' alleged failure to  
25 warn about exposures to the Listed Chemical contained in products manufactured, distributed, or  
26 sold by MWV. In furtherance of such intention, the release hereby given shall be and remain in  
27 effect as a full and complete release notwithstanding the discovery or existence of any such  
28 additional or different claims or facts arising out of the released matters.

5.2.3 The parties further understand and agree that this release shall not extend  
upstream to any entities that manufactured the Covered Products or any component parts thereof,

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or any distributors or suppliers who sold the Covered Products or any component parts thereof to MWV.

**5.3 MWV's Release of Dr. Held**

MWV waives any and all claims against Dr. Held, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products, as of the Effective Date.

**6. COURT APPROVAL**

**6.1** This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within nine months after it has been fully executed by all parties.

**6.2** Upon court approval of the Consent Judgment, the Parties waive their respective rights to a hearing or trial on the allegations of the complaint.

**7. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California. To the extent that any Covered Product is subject to a state or federal law applicable to the DEHP content of the products, including but not limited to the Consumer Product Safety Improvement Act of 2008, nothing in this Consent Judgment shall alter or amend the application of such state or federal law.

1     **8.     NOTICES**

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

6                     To MWV:  
7                     John H. Beasley  
8                     Assistant General Counsel  
9                     MeadWestvaco Corporation  
10                    11013 W. Broad Street  
11                    Glen Allen, VA 23060

12                    With a copy to:  
13                    Jeffrey Margulies, Esq.  
14                    Fulbright & Jaworski, LLP  
15                    555 South Flower Street  
16                    41<sup>st</sup> Floor  
17                    Los Angeles, CA 90071

18                    To Dr. Held:  
19                    Hirst & Chanler LLP  
20                    Attn: Proposition 65 Coordinator  
21                    2560 Ninth Street, Suite 214  
22                    Berkeley, CA 94710

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

25     **9.     COUNTERPARTS, FACSIMILE SIGNATURES**

26             This Consent Judgment may be executed in counterparts and by facsimile, each of which  
27 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
28 same document.

29     **10.    COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

1 **11. MODIFICATION**

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

5 **12. ATTORNEY'S FEES**

6 **12.1** A Party who unsuccessfully brings or contests an action arising out of this Consent  
7 Judgment shall be required to pay the prevailing Party's reasonable attorney's fees and costs  
8 unless the unsuccessful Party has acted with substantial justification. For purposes of this  
9 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
10 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

11 **12.2** Except as specifically provided in the above paragraph and in Section 4.1, each  
12 Party shall bear its own costs and attorney's fees in connection with this action.

13 **12.3** Nothing in this Section 12 shall preclude a Party from seeking an award of  
14 sanctions pursuant to law.

15 **13. AUTHORIZATION**

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

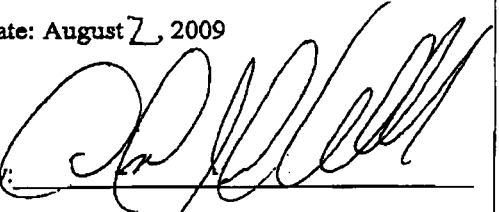
19 **AGREED TO:**

**AGREED TO:**

20 Date: August \_\_, 2009

Date: August 7, 2009

21 By: \_\_\_\_\_  
22

23 By:  \_\_\_\_\_

24 Plaintiff, Anthony E. Held, Ph.D., P.E.

25 Defendant, MeadWestvaco Corporation  
26 DIRK J. KROUSKOP  
27 VICE-PRESIDENT, SAFETY  
28 HEALTH AND ENVIRONMENT

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17 respective parties and have read, understood, and agree to all of the terms and conditions of this  
18 Consent Judgment.

19 **AGREED TO:**

**AGREED TO:**

20 Date: **APPROVED**  
21 *By Anthony E Held at 5:49 pm, 8/10/09*

Date: August \_\_, 2009

22  
23 By: *Anthony E Held*  
24 Plaintiff, Anthony E. Held, Ph.D., P.E.

By: \_\_\_\_\_  
Defendant, MeadWestvaco Corporation