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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 17 2011

CLERK OF THE SUPERIOR COURT  
By MCN MATEO Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11 ANTHONY E. HELD, PhD., P.E.,

12 Plaintiff,

13 v.

14 BLOCK AND COMPANY, INC.; MMF  
15 INDUSTRIES; and DOES 1-150, inclusive,

16 Defendants.  
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Case No. BG11590954

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, ANTHONY  
3 HELD, PH.D, P.E., in the public interest of the citizens of the state of California, to enforce the  
4 People's right to be informed of the presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic  
5 chemical found in wallets sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens about their exposure to DEHP present in or on wallets that defendants  
8 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

9 3. High levels of DEHP are commonly found in and on the wallets that defendants  
10 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

11 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
12 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the  
13 course of doing business shall knowingly and intentionally expose any individual to a chemical  
14 known to the state to cause cancer or reproductive toxicity without first giving clear and  
15 reasonable warning to such individual ..." (Cal. Health & Safety Code, § 25249.6.)

16 5. On October 24, 2003, California identified and listed DEHP as a chemical known  
17 to cause birth defects and other reproductive harm. DEHP became subject to the "clear and  
18 reasonable warning" requirements of Proposition 65 one year later on October 24, 2004. (Tit.  
19 27 Cal. Code Regs. ("CCR") § 27001(c); Cal. Health & Safety Code §§ 25249.8 &  
20 25249.10(b).) DEHP shall be referred to hereinafter as the "LISTED CHEMICAL."

21 6. Defendants manufacture, distribute, and/or offer for sale wallets containing  
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *MMF Industries*  
23 *Multi-Purpose Wallet, #234110638 (#0 78541 18138 0)*. All such wallets containing the  
24 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

25 7. Defendants' failure to warn consumers and/or other individuals in the state of  
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
27 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
28 of such conduct as well as civil penalties for each such violation.



1 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
2 in the course of doing business within the meaning of California Health & Safety Code §  
3 25249.11(c).

4 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
5 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
6 in the state of California.

7 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
8 the course of doing business within the meaning of California Health & Safety Code §  
9 25249.11(c).

10 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 state of California.

12 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
13 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
15 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
16 herein. When ascertained, their true names shall be reflected in an amended complaint.

17 22. BLOCK, MMF, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
22 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, and  
23 because one or more instances of wrongful conduct occurred, and continue to occur, in the  
24 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,  
25 business in this County with respect to the PRODUCTS.

26 24. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction  
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1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that is a citizen of the state of California, has sufficient minimum contacts in the  
6 state of California, or otherwise purposefully avails itself of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

11 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 25, inclusive.

13 27. The citizens of the state of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

17 28. Proposition 65 states, “[n]o person in the course of doing business shall  
18 knowingly and intentionally expose any individual to a chemical known to the state to cause  
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual...” (*Ibid.*)

21 29. On or about March 31, 2011, a sixty-day notice of violation, together with the  
22 requisite certificate of merit, was provided to BLOCK, MMF, and various public enforcement  
23 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers  
24 and users in the state of California were being exposed to DEHP resulting from the reasonably  
25 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and

1 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
2 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
3 DEFENDANTS' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
4 believes that such violations will continue to occur into the future.

5 31. After receipt of the claims asserted in the sixty-day notice of violation, the  
6 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
7 cause of action against DEFENDANTS under Proposition 65.

8 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the  
10 allowable state limits.

11 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
12 distributed, and/or offered for sale or use in California contained the LISTED CHEMICAL.

13 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
14 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
15 during the reasonably foreseeable use of the PRODUCTS.

16 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
17 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposure is  
18 defined by Title 27 CCR § 25602(b).

19 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
20 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
21 and/or ingestion.

22 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
23 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
24 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
25 sale or use to individuals in the state of California.

26 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
27 consumers and/or other individuals in the state of California who were, or who could become,  
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
2 reasonably foreseeable use of the PRODUCTS.

3 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
4 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
5 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold  
6 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
7 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

8 40. As a consequence of the above-described acts, DEFENDANTS are liable for a  
9 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
10 Safety Code § 25249.7(b).

11 41. As a consequence of the above-described acts, California Health & Safety Code  
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
18 alleged herein;

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
21 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
22 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure the LISTED  
23 CHEMICAL;

24 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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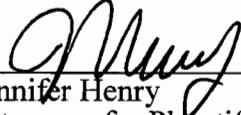
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1           4.     That the Court grant such other and further relief as may be just and proper.  
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3     Dated: August 16, 2011  
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Respectfully Submitted,  
THE CHANLER GROUP

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6     By:  \_\_\_\_\_  
7           Jennifer Henry  
8           Attorneys for Plaintiff  
9           ANTHONY E. HELD, PHD., P.E.  
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