

1 Josh Voorhees, State Bar No. 241436
2 Christopher Tuttle, State Bar No. 264545
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.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

BUILDING MATERIALS HOLDING
CORPORATION.; and DOES 1-150,
inclusive,

Defendants.

Case No. 114CV270088

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held (“Held”)
4 and defendant Building Materials Holding Company (“BMC”), with Held and BMC each referred
5 to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 BMC employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that BMC manufactures, imports, sells and/or distributes for sale in California,
16 tape measures with vinyl/PVC straps and grips containing di(2-ethylhexyl)phthalate (“DEHP”), and
17 that it does so without providing the health hazard warning that Held alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are tape measures with vinyl/PVC straps
21 and grips allegedly containing DEHP, manufactured and/or supplied to BMC by Bell Link
22 International, Inc., and sold or distributed for sale in California by BMC, identified as the *BMC 25’*
23 *x 1” Tape Measure, SKU # SIHF7H85X, UPC #8 47952 00006 7* (hereinafter referred to as
24 “Covered Products”).

25 **1.6 Notice of Violation**

26 On April 30, 2014, Held served BMC and the requisite public enforcement agencies with a
27 60-Day Notice of Violation (“Notice”), alleging that BMC violated Proposition 65 when it failed to
28 warn its customers and consumers in California that the Covered Products expose users to DEHP.

1 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 29, 2014, Held commenced the instant action, naming BMC as a defendant for
5 the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over BMC as to the allegations contained in the Complaint, that venue is proper in the
18 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2. INJUNCTIVE SETTLEMENT TERMS**

24 Commencing on the Effective Date and continuing thereafter, any and all Covered
25 Products manufactured, sold or otherwise distributed by BMC shall be only Covered Products
26 which have been reformulated so as to contain a maximum DEHP concentration 0.1 percent
27 (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency
28 testing methodologies 3580A and 8270C, or other methodologies utilized by state or federal

1 agencies for the purpose of determining DEHP content in a solid substance (hereinafter referred to
2 as “Reformulated Covered Products”). As of the Effective Date, BMC represents that it is not
3 currently offering the Covered Products or Reformulated Covered Products for sale in California,
4 but agrees that if it recommences sales of such products, it will offer only Reformulated Covered
5 Products. Before recommencement of sales, an officer of BMC will provide plaintiff with an
6 original, signed written certification that all of the Covered Products it ships for sale or distributes
7 for sale in California as of the date of its certification are Reformulated Covered Products, and
8 that, in the future, BMC will continue to offer as Covered Products only those which are
9 Reformulated Covered Products.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

12 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
13 claims referred to in this Consent Judgment, BMC shall pay \$2,800 in civil penalties in accordance
14 with this Section. This penalty payment will be allocated in accordance with California Health &
15 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
16 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
17 remitted to Held. Held’s counsel shall be responsible for remitting BMC’s penalty payment(s)
18 under this Consent Judgment to OEHHA. BMC shall make the civil penalty payment of \$2,800 and
19 shall provide its payment in a single check made payable to “Anthony E. Held, Client Trust
20 Account” to be delivered to the address provided in Section 3.4, below.

21 **3.2 Reimbursement of Attorneys’ Fees and Costs**

22 The Parties acknowledge that Held and his counsel offered to resolve this dispute without
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
24 to be resolved after the material terms of the agreement had been settled. Shortly after the other
25 settlement terms had been finalized, BMC expressed a desire to resolve Held’s fees and costs. The
26 Parties then negotiated a resolution of the compensation due to Held and his counsel under general
27 contract principles and the private attorney general doctrine codified at California Code of Civil
28 Procedure § 1021.5. For all work performed through the mutual execution of this agreement and

1 the Court's approval of the same, but exclusive of fees and costs on appeal, if any, BMC shall
2 reimburse Held and his counsel \$27,000. BMC's payment shall be due within two days of the
3 Effective Date, and delivered to the address in Section 3.4 in the form of a check payable to "The
4 Chanler Group." The reimbursement shall cover all fees and costs incurred by Held investigating,
5 bringing this matter to BMC's attention, litigating, and negotiating a settlement of the matter in the
6 public interest.

7 **3.3 Payments Held In Trust**

8 BMC shall deliver all payments required by this Consent Judgment to its counsel within
9 one week of the date that this agreement is fully executed by the Parties. BMC's counsel shall
10 confirm receipt of settlement funds in writing to Held's counsel and, thereafter, hold the amounts
11 paid in trust until such time as the Court grants the motion for approval of the Parties' settlement
12 contemplated by Section 5. Within two days of the Effective Date, BMC's counsel shall deliver
13 all settlement payments it has held in trust to Held's counsel at the address provided in Section 3.4.

14 **3.4 Payment Address**

15 All payments required by this Consent Judgment shall be delivered to the following
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Held's Release of Proposition 65 Claims**

24 Held, acting on his own behalf and in the public interest, releases BMC and its parents,
25 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
26 attorneys ("Releasees") and each entity to whom BMC directly or indirectly distributes or sells the
27 Covered Products including, but not limited to, its downstream distributors, wholesalers, customers,
28 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
any and all claims of violations arising under Proposition 65 for unwarned exposures to DEHP from

1 the Covered Products manufactured, imported, distributed or sold by BMC prior to the Effective
2 Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes
3 compliance with Proposition 65 by BMC with respect to the alleged or actual failure to warn about
4 exposures to DEHP from Covered Products manufactured, sold or distributed for sale by BMC after
5 the Effective Date.

6 **4.2 Held's Individual Release of Claims**

7 Held, in his individual capacity only and *not* in his representative capacity, also provides a
8 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
11 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to DEHP in Covered Products manufactured, imported, distributed or sold by BMC
13 before the Effective Date.

14 **4.3 BMC's Release of Held**

15 BMC, on its own behalf and on behalf of its past and current agents, representatives,
16 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
17 attorneys and other representatives, for any and all actions taken or statements made (or those that
18 could have been taken or made) by Held and his attorneys and other representatives in the course of
19 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to
20 the Covered Products.

21 **5. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court and
23 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
24 after it has been fully executed by all Parties. Held and BMC agree to support the entry of this
25 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
26 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
27 noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall
28 draft and file and BMC shall support, appearing at the hearing if so requested. If any third-party

1 objection to the motion is filed, Held and BMC agree to work together to file a reply and appear at
2 any hearing. This provision is a material component of the Consent Judgment and shall be treated
3 as such in the event of a breach.

4 **6. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of California
6 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
7 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
8 BMC may provide Held with written notice of any asserted change in the law, and shall have no
9 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
10 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
11 BMC from its obligation to comply with any pertinent state or federal law or regulation.

12 **7. NOTICE**

13 Unless specified herein, all correspondence and notice required by this Consent Judgment
14 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
15 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
16 following addresses:

17 To BMC:

18 Zachary Smith, Esq.
19 Weintraub Tobin
20 400 Capital Mall, 11th Floor
21 Sacramento, CA 95814

To Held:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

24 **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **9. COMPLIANCE WITH REPORTING REQUIREMENTS**

2 Held and his counsel agree to comply with the reporting form requirements referenced in
3 California Health and Safety Code section 25249.7(f).

4 **10. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **11. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understood, and agree to all of the terms and conditions of this
11 Consent Judgment.

12
13 **AGREED TO:**

14 Anthony E Held
15 ANTHONY E. HELD, PH.D., P.E.
16

17 Dated: 6/30/15

AGREED TO:

BUILDING MATERIALS HOLDING CORPORATION

By: [Signature]
(Print Name)

Its: CEO
(Title)

Dated: 7-1-15

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