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LEGAL PROCESS #1

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE CITY AND COUNTY OF SACRAMENTO
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 LISI INTERNATIONAL CO., LTD.; LISI
17 USA; NINGBO LISI MANUFACTURING
18 CO., LTD.; 99 CENTS ONLY STORES; and
19 DOES 1 through 150, inclusive,

20 Defendants.

Case No. 07AS03962

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
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 (a toxic chemical) found
5 in certain sipper bottles manufactured and sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn
7 California citizens about their exposure to di(2-ethylhexyl)phthalate present in or on certain sipper
8 bottles that defendants manufacture, distribute and/or offer for sale to consumers throughout the
9 State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in the sipper bottles
11 with animal characters on the lids that defendants manufacture, distribute and/or offer for sale to
12 consumers throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §25249.6 *et seq.* (“Proposition 65”), “No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual” (*Cal. Health & Safety Code* §25249.6.)

18 5. On January 1, 1988, California identified and listed di(2-ethylhexyl)phthalate as a
19 chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the “clear
21 and reasonable warning” requirements of Proposition 65, beginning on January 1, 1989. (22 *CCR*
22 *§12000(c)*; *Cal. Health & Safety Code* §25249.8.) Di(2-ethylhexyl)phthalate shall hereinafter be
23 referred to as the “LISTED CHEMICAL.”

24 6. Defendants manufacture and sell sipper bottles with animal characters containing
25 Di(2-ethylhexyl)phthalate on the lids including, but not limited to, *LISI Sipper Bottle with Animal*,
26 *#20205 (#8 06574 20205 1)*, which contain excessive levels of the LISTED CHEMICAL. All such
27 sipper bottles containing the LISTED CHEMICAL shall hereinafter be referred to as the
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1 “PRODUCTS.”

2 7. Defendants’ failure to warn consumers and/or other individuals in the State of
3 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sale
4 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
5 conduct as well as civil penalties for each such violation.

6 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
7 and permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.
9 (*Cal. Health & Safety Code §25249.7(a).*)

10 9. Plaintiff also seeks civil penalties against defendants for their violations of
11 Proposition 65, as provided for by California Health & Safety Code §25249.7(b).

12 **PARTIES**

13 10. Plaintiff ANTHONY E. HELD, PH.D., P.E., is a citizen of the City and County of
14 Sacramento in the State of California who is dedicated to protecting the health of California
15 citizens through the elimination or reduction of toxic exposures from consumer products, and
16 brings this action in the public interest pursuant to California Health & Safety Code §25249.7.

17 11. Defendant LISI INTERNATIONAL CO., LTD. (“LISI”) is a person doing business
18 within the meaning of California Health & Safety Code §25249.11.

19 12. LISI manufactures, distributes and/or offers the PRODUCTS for sale or use in the
20 State of California or implies by its conduct that it manufactures, distributes and/or offers the
21 PRODUCTS for sale or use in the State of California.

22 13. Defendant LISI USA (“LISI USA”) is a person doing business within the meaning
23 of California Health & Safety Code §25249.11.

24 14. LISI USA manufactures, distributes and/or offers the PRODUCTS for sale or use in
25 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
26 PRODUCTS for sale or use in the State of California.

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1 15. Defendant NINGBO LISI MANUFACTURING CO., LTD. (“NINGBO”) is a
2 person doing business within the meaning of California Health & Safety Code §25249.11.

3 16. NINGBO manufactures, distributes and/or offers the PRODUCTS for sale or use in
4 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
5 PRODUCTS for sale or use in the State of California.

6 17. Defendant 99 CENTS ONLY STORES (“99 CENTS”) is a person doing business
7 within the meaning of California Health & Safety Code §25249.11.

8 18. 99 CENTS manufactures, distributes and/or offers the PRODUCTS for sale or use
9 in the State of California or implies by its conduct that it manufactures, distributes and/or offers the
10 PRODUCTS for sale or use in the State of California.

11 19. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
12 doing business within the meaning of California Health & Safety Code §25249.11.

13 20. MANUFACTURER DEFENDANTS engage in the process of research, testing,
14 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
15 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
16 one or more of the PRODUCTS for sale or use in the State of California.

17 21. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
18 doing business within the meaning of California Health & Safety Code §25249.11.

19 22. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
20 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
21 the State of California.

22 23. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
23 business within the meaning of California Health & Safety Code §25249.11.

24 24. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
25 of California.

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

4 26. LISI, LISI USA, NINGBO, 99 CENTS, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
6 collectively be referred to hereinafter as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 27. Venue is proper in the Sacramento County Superior Court, pursuant to Code of
9 Civil Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because
10 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
11 Sacramento and/or because DEFENDANTS conducted, and continue to conduct, business in this
12 County with respect to the PRODUCTS.

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

17 29. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
19 association that either are citizens of the State of California, have sufficient minimum contacts in
20 the State of California, or otherwise purposefully avail themselves of the California market.
21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
22 courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65)**

25 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 29, inclusive.

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1 31. The citizens of the State of California have expressly stated in the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*
3 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer, birth
4 defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

5 32. Proposition 65 states, “No person in the course of doing business shall knowingly
6 and intentionally expose any individual to a chemical known to the state to cause cancer or
7 reproductive toxicity without first giving clear and reasonable warning to such individual”
8 (*Id.*)

9 33. On June 15, 2007, a sixty-day notice of violation, together with the requisite
10 certificate of merit, was provided to LISI, LISI USA, NINGBO, 99 CENTS, and various public
11 enforcement agencies stating that as a result of DEFENDANTS’ sale of PRODUCTS, purchasers
12 and users in the State of California were being exposed to the LISTED CHEMICAL resulting from
13 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
14 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

15 34. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
16 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
17 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
18 violation of California Health & Safety Code §25249.6 has continued to occur beyond
19 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
20 believes that such violations will continue to occur into the future.

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

24 36. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
25 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
26 limits.

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1 37. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
2 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
3 CHEMICAL.

4 38. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
5 expose individuals to the LISTED CHEMICAL through ingestion during the reasonably
6 foreseeable use of the PRODUCTS.

7 39. The normal and reasonably foreseeable use of the PRODUCTS has caused and
8 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
9 by 22 CCR §12601(b).

10 40. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
11 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion.

12 41. DEFENDANTS, and each of them, intended that such exposures to the LISTED
13 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
14 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
15 of PRODUCTS to individuals in the State of California.

16 42. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers and/or other individuals in the State of California who were or who could become
18 exposed to the LISTED CHEMICAL through ingestion during the reasonably foreseeable use of
19 the PRODUCTS.

20 43. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
21 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion
22 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without
23 “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which
24 harm they have no plain, speedy or adequate remedy at law.

25 44. As a consequence of the above-described acts, DEFENDANTS, and each of them,
26 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
27 Health & Safety Code §25249.7(b).
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1 45. As a consequence of the above-described acts, California Health & Safety Code
 2 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
 3 DEFENDANTS.

4 46. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
 5 set forth hereinafter.

6 **PRAYER FOR RELIEF**

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

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

11 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
 12 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
 13 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
 14 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to
 15 the LISTED CHEMICAL;

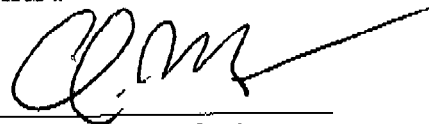
16 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

17 4. That the Court grant such other and further relief as may be just and proper.

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 19 Dated: August 28, 2007

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin

Attorney for Plaintiff
 ANTHONY E. HELD, PH.D., P.E.