

1 David Lavine, State Bar No. 166744
2 Christopher M. Martin, State Bar No. 186021
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8188

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

ENDORSED
FILED
ALAMEDA COUNTY

OCT 12 2007

CLERK OF THE SUPERIOR COURT
By JAMIE HARRIS Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 REGENT BABY PRODUCTS
18 CORPORATION; and DOES 1 through 150,
19 inclusive,

20 Defendants.

21 Case No. _____

22 **COMPLAINT FOR CIVIL PENALTIES
23 AND INJUNCTIVE RELIEF**

24 *(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 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 toy squeeze ducks sold 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
8 squeeze ducks for children that defendants manufacture, distribute and/or offer for sale to
9 consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the squeeze
11 ducks that defendants manufacture, distribute and/or offer for sale to consumers throughout the
12 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, distribute and/or sell squeeze ducks for children
25 containing Di(2-ethylhexyl)phthalate including, but not limited to, *Baby King 3 Squeeze Ducks,*
26 *#BK10 (#0 94606 00010 6).* All such squeeze ducks containing the LISTED CHEMICAL shall
27 hereinafter be referred to as the "PRODUCTS."

28

1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
3 the State of California.

4 17. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
5 business within the meaning of California Health & Safety Code § 25249.11.

6 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
7 of California.

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

13 20. REGENT BABY PRODUCTS CORPORATION, MANUFACTURER
14 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
15 appropriate, collectively be referred to hereinafter as "DEFENDANTS."

16 **VENUE AND JURISDICTION**

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

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

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
10 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth
11 defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

12 26. Proposition 65 states, "No person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual"
15 (*Id.*)

16 27. On June 26, 2007, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to REGENT BABY PRODUCTS CORPORATION, and various
18 public enforcement agencies, stating that as a result of DEFENDANTS' sale of PRODUCTS,
19 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
20 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
21 purchasers and users first having been provided with a "clear and reasonable warning" regarding
22 such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
25 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
26 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
27 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
28 believes that such violations will continue to occur into the future.

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

4 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
6 limits.

7 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
9 CHEMICAL.

10 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL through ingestion during the reasonably
12 foreseeable use of the PRODUCTS.

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

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion.

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

22 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers and/or other individuals in the State of California who were or who could become
24 exposed to the LISTED CHEMICAL through ingestion during the reasonably foreseeable use of
25 the PRODUCTS.

26 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion
28 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without

1 “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which
2 harm they have no plain, speedy or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS, and each of them,
4 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
5 Health & Safety Code § 25249.7(b).

6 39. As a consequence of the above-described acts, California Health & Safety Code §
7 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

8 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
9 set forth hereinafter.

10 **PRAYER FOR RELIEF**

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

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

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

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

21 4. That the Court grant such other and further relief as may be just and proper.
22

23 Dated: October 12, 2007

Respectfully Submitted,
HIRST & CHANLER LLP



25 David Lavine
26 Attorney for Plaintiff
27 ANTHONY E. HELD, PH.D., P.E.
28