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ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 13 2009

CLERK OF THE SUPERIOR COURT  
By BARBARA LAMOTTE  
Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

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

13 Plaintiff,

14 v.

15 TOYS "R" US, INC.; BENTEX GROUP,  
16 INC.; FOUR SEASONS GENERAL  
17 MERCHANDISE, INC.; SAVE MART  
18 SUPERMARKETS; FOOD MAXX; LONGS  
19 DRUG STORES CORPORATION; CAPITAL  
20 SOUVENIR COMPANY, INC.; CAPSCO,  
21 INC.; DISGUISE, INC.; NATIONWIDE  
22 TRADING CORP.; PEERLESS PLASTICS,  
23 INC.; SCHOOL SPECIALTY, INC.; SYKEL  
24 ENTERPRISES, INC.; FABRIQUE  
25 INNOVATIONS, INC.; and DOES 1-900,  
26 inclusive,

27 Defendants.  
28

Case No. RG07350981

**FOURTH AMENDED 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 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)  
5 found in baby and children’s products manufactured, distributed, and sold by defendants in  
6 California.

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

11 3. High levels of DEHP are commonly found in and on baby and children’s products  
12 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
13 California.

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

19 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
20 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
21 became subject to the warning requirement one year later and was therefore subject to the “clear  
22 and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (27  
23 CCR § 27001(c) (formerly 22 CCR § 12000(c)); Cal. Health & Safety Code § 25249.8.)

24 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED  
25 CHEMICAL.”

26 7. For purposes of this Complaint, Defendant TOYS “R” US, INC. manufactures,  
27 distributes, and/or sells items containing excessive levels of DEHP limited to products with the  
28 names *Just Like Home Bologna Sandwich, #95051 (#8 01725 95054 6), Just Like Home Meal*

1 *Time #9108 (#8 03516 36313 9), Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4),*  
2 *Micro Airtech Football (Fisher Price), Sizzlin' Cool Junior Golf Bag (#7 17851 98747 2), and*  
3 *McDonald McKids 37pc Play Food Set, #81423 (#0 45672 81423 4).* Plaintiff ANTHONY E.  
4 HELD, PH.D., P.E., is informed and believes and based on such information and belief alleges  
5 that the *Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4)* is not manufactured by  
6 Franklin Sports, Inc., Enor Corporation, or Ja-Ru, Inc. The items *Just Like Home Bologna*  
7 *Sandwich, #95051 (#8 01725 95054 6), Just Like Home Meal Time #9108 (#8 03516 36313 9),*  
8 *Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4), Micro Airtech Football (Fisher*  
9 *Price), Sizzlin' Cool Junior Golf Bag (#7 17851 98747 2), and McDonald McKids 37pc Play*  
10 *Food Set, #81423 (#0 45672 81423 4)* shall, where appropriate, collectively be referred to  
11 hereinafter as the "TOYS 'R' US ITEMS."

12 8. Defendants BENTEX GROUP, INC., FOUR SEASONS GENERAL  
13 MERCHANDISE, INC., SAVE MART SUPERMARKETS, FOOD MAXX, LONGS DRUG  
14 STORES CORPORATION, CAPITAL SOUVENIR COMPANY, INC., CAPSCO, INC.,  
15 DISGUISE, INC., NATIONWIDE TRADING CORP., PEERLESS PLASTICS, INC., SCHOOL  
16 SPECIALTY, INC., SYKEL ENTERPRISES, INC., and FABRIQUE INNOVATIONS, INC.  
17 manufacture, distribute, and/or sell plastic and/or vinyl baby and children's products containing  
18 the LISTED CHEMICAL as follows:

19 (a) Defendants BENTEX GROUP, INC., and FOUR SEASONS GENERAL  
20 MERCHANDISE, INC., manufacture, distribute and/or sell bibs containing excessive  
21 levels of DEHP including, but not limited to, the *Spider-Man & Friends Vinyl Bib,*  
22 *#00682RS (#0 79522 29133 3);*

23 (b) For purposes of this Complaint, Defendants SAVE MART  
24 SUPERMARKETS, and FOOD MAXX manufacture, distribute and/or sell bibs  
25 containing excessive levels of DEHP limited to products with the name *My Baby*  
26 *Products 3pc PVC Baby Bibs, BI-232 (#7 88914 30437 6);*

27 (c) Defendant LONGS DRUG STORES CORPORATION manufactures,  
28 distributes and/or sells soft vinyl sporting toys for children containing excessive levels of

1 DEHP including, but not limited to, *Pacific Living Kids EZ Mitt with Ball*, (#0 12333  
2 09821 0);

3 (d) Defendants CAPITAL SOUVENIR COMPANY, INC., and CAPSCO,  
4 INC. manufacture, distribute and/or sell keychains with vinyl components containing  
5 excessive levels of DEHP including, but not limited to, *Keychain, Black Croc with Sun*  
6 (#6 53034 19250 2);

7 (e) Defendant DISGUISE, INC. manufactures, distributes and/or sells  
8 children's inflatable toys containing excessive levels of DEHP including, but not limited  
9 to, the *Buzz Inflatable Jet Pack*, #11204-11 (#0 86947 11112 2);

10 (f) Defendant NATIONWIDE TRADING CORP. manufactures, distributes  
11 and/or sells feeding bottle nipples containing excessive levels of DEHP including, but not  
12 limited to, the *Baby Time Baby Gift Set, Item No. NBB51* (#7 04936 40051 3);

13 (g) Defendant PEERLESS PLASTICS, INC. manufactures, distributes and/or  
14 sells children's vinyl smocks containing excessive levels of DEHP including, but not  
15 limited to, the *Kinder Products KinderSmock* (#0 26868 00823 1);

16 (h) Defendant SCHOOL SPECIALTY, INC. manufactures, distributes and/or  
17 sells: (i) children's soft vinyl sporting toys containing excessive levels of DEHP  
18 including, but not limited to, *Sportime Sof-Stuf Balls — 4" Softball*, Item #1008801171;  
19 and (ii) children's inflatable vinyl toys containing excessive levels of DEHP including,  
20 but not limited to, *Beach Ball 16"* (Item #11268772171); and

21 (i) Defendants SYKEL ENTERPRISES, INC., and FABRIQUE  
22 INNOVATIONS, INC. manufacture, distribute and/or sell children's sporting toys  
23 containing excessive levels of DEHP including, but not limited to, the *Collegiate Vinyl*  
24 *Tablecloth, University of Southern California Pattern #USC-051*.

25 9. The TOYS "R" US ITEMS and the plastic and/or vinyl baby and children's items  
26 manufactured, distributed, and/or sold by the other defendants named herein, which items  
27 contain the LISTED CHEMICAL, as listed above in paragraphs 7, and 8(a) through 8(i), shall,  
28 where appropriate, collectively be referred to as the "PRODUCTS."



1           19. Defendants CAPITAL SOUVENIR COMPANY, INC. (CAPITAL SOUVENIR)  
2 and CAPSCO, INC. (CAPSCO) are persons doing business within the meaning of California  
3 Health & Safety Code § 25249.11.

4           20. Defendant DISGUISE, INC. (DISGUISE) is a person doing business within the  
5 meaning of California Health & Safety Code § 25249.11.

6           21. Defendant NATIONWIDE TRADING CORP. (NATIONWIDE) is a person  
7 doing business within the meaning of California Health & Safety Code § 25249.11.

8           22. Defendant PEERLESS PLASTICS, INC. (PEERLESS) is a person doing business  
9 within the meaning of California Health & Safety Code § 25249.11.

10          23. Defendant SCHOOL SPECIALTY, INC. (SCHOOL SPECIALTY) is a person  
11 doing business within the meaning of California Health & Safety Code § 25249.11.

12          24. Defendant SYKEL ENTERPRISES, INC. (SYKEL) is a person doing business  
13 within the meaning of California Health & Safety Code § 25249.11.

14          25. Defendant FABRIQUE INNOVATIONS, INC. (FABRIQUE) is a person doing  
15 business within the meaning of California Health & Safety Code § 25249.11.

16          26. Defendants TOYS "R" US, BENTEX, FOUR SEASONS, SAVE MART, FOOD  
17 MAXX, LONGS, CAPITAL SOUVENIR, CAPSCO, DISGUISE, NATIONWIDE, PEERLESS,  
18 SCHOOL SPECIALTY, SYKEL, and FABRIQUE, and each of them, manufacture, distribute  
19 and/or offer the PRODUCTS for sale or use in the State of California or imply by their conduct  
20 that they manufacture, distribute and/or offer the PRODUCTS for sale or use in the State of  
21 California.

22          27. Defendants DOES 1-300 (MANUFACTURER DEFENDANTS) are each persons  
23 doing business within the meaning of California Health & Safety Code § 25249.11.

24          28. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
26 engage in the process of research, testing, designing, assembling, fabricating and/or  
27 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.



1 all causes except those given by statute to other trial courts.” The statute under which this action  
2 is brought does not specify any other basis of subject matter jurisdiction.

3 37. 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 either are citizens of the State of California, have sufficient minimum contacts in  
6 the State of California, or otherwise purposefully avail themselves of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
8 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 38. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 37, inclusive.

13 39. 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 § 25249.5, *et seq.*  
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
16 birth defects and other reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

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

21 41. On June 26, 2007, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to TOYS “R” US and various public enforcement agencies  
23 stating that as a result of this defendant’s sales of the *Just Like Home Bologna Sandwich, #95051*  
24 (*#8 01725 95054 6*), purchasers and users in the State of California were being exposed to the  
25 LISTED CHEMICAL resulting from the reasonably foreseeable uses of this item, without the  
26 individual purchasers and users first having been provided with a “clear and reasonable warning”  
27 regarding such toxic exposures.



1           42.     On November 20, 2007, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to:

3           (a)     BENTEX, FOUR SEASONS, and various public enforcement agencies  
4           stating that as a result of DEFENDANTS' sale of the products listed above in paragraph  
5           8(a), purchasers and users in the State of California were being exposed to the LISTED  
6           CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without  
7           the individual purchasers and users first having been provided with a "clear and  
8           reasonable warning" regarding such toxic exposures; and

9           (b)     SAVE MART, FOOD MAXX, and various public enforcement agencies  
10          stating that as a result of DEFENDANTS' sale of the products listed above in paragraph  
11          8(b), purchasers and users in the State of California were being exposed to the LISTED  
12          CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without  
13          the individual purchasers and users first having been provided with a "clear and  
14          reasonable warning" regarding such toxic exposures.

15          43.     On July 10, 2008, sixty-day notices of violation, together with the requisite  
16 certificate of merit, were provided to TOYS "R" US and various public enforcement agencies  
17 stating that as a result of this defendant's sales of the *Just Like Home Meal Time #9108 (#8*  
18 *03516 36313 9)* and the *Sizzlin' Cool EZ Mitt & Ball, #98743 (#7 17851 98743 4)*, purchasers  
19 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
20 from the reasonably foreseeable uses of these items, without the individual purchasers and users  
21 first having been provided with a "clear and reasonable warning" regarding such toxic exposures;  
22 and

23          44.     On August 14, 2008, a sixty-day notice of violation, together with the requisite  
24 certificate of merit, was provided to LONGS and various public enforcement agencies stating  
25 that as a result of sales by LONGS of the products listed above in paragraph 8(c), purchasers and  
26 users in the State of California were being exposed to the LISTED CHEMICAL resulting from  
27 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
28 first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

1           45.     On October 17, 2008, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to DISGUISE, and various public enforcement agencies stating  
3 that as a result of DEFENDANTS' sale of the products listed above in paragraph 8(e), purchasers  
4 and users in the State of California were being exposed to the LISTED CHEMICAL resulting  
5 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
6 users first having been provided with a "clear and reasonable warning" regarding such toxic  
7 exposures; and

8           46.     On November 7, 2008 a sixty-day notice of violation, together with the requisite  
9 certificate of merit, was provided to:

10           (a)     NATIONWIDE and various public enforcement agencies stating that as a  
11 result of DEFENDANTS' sale of the products listed above in paragraph 8(f), purchasers  
12 and users in the State of California were being exposed to the LISTED CHEMICAL  
13 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
14 purchasers and users first having been provided with a "clear and reasonable warning"  
15 regarding such toxic exposures;

16           (b)     PEERLESS and various public enforcement agencies stating that as a  
17 result of DEFENDANTS' sale of the products listed above in paragraph 8(g), purchasers  
18 and users in the State of California were being exposed to the LISTED CHEMICAL  
19 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
20 purchasers and users first having been provided with a "clear and reasonable warning"  
21 regarding such toxic exposures; and

22           (c)     SCHOOL SPECIALTY, and various public enforcement agencies stating  
23 that as a result of DEFENDANTS' sale of the products listed above in paragraph 8(h),  
24 purchasers and users in the State of California were being exposed to the LISTED  
25 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without  
26 the individual purchasers and users first having been provided with a "clear and  
27 reasonable warning" regarding such toxic exposures.  
28

1           47.     On November 28, 2008, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to TOYS “R” US and various public enforcement agencies  
3 stating that as a result of this defendant’s sales of: (i) the *Mirco Airtech Football (Fisher Price)*;  
4 (ii) the *Sizzlin’ Cool Junior Golf Bag (#7 17851 98747 2)*, and (iii) the *McDonald McKids 37pc*  
5 *Play Food Set, #81423 (#0 45672 81423 4)*, purchasers and users in the State of California were  
6 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of  
7 these items, without the individual purchasers and users first having been provided with a “clear  
8 and reasonable warning” regarding such toxic exposures.

9           48.     On December 23, 2008 a sixty-day notice of violation, together with the requisite  
10 certificate of merit, was provided to:

11                 (a)     CAPITAL SOUVENIR, CAPSCO, and various public enforcement  
12 agencies stating that as a result of DEFENDANTS’ sale of the products listed above in  
13 paragraph 8(d), purchasers and users in the State of California were being exposed to the  
14 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,  
15 without the individual purchasers and users first having been provided with a “clear and  
16 reasonable warning” regarding such toxic exposures; and

17                 (b)     SYKEL, FABRIQUE, and various public enforcement agencies stating  
18 that as a result of DEFENDANTS’ sale of the products listed above in paragraph 8(i),  
19 purchasers and users in the State of California were being exposed to the LISTED  
20 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without  
21 the individual purchasers and users first having been provided with a “clear and  
22 reasonable warning” regarding such toxic exposures.

23           49.     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           50.     After receipt of the claims asserted in the sixty-day notices of violation, the  
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
3 cause of action against DEFENDANTS under Proposition 65.

4           51.     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           52.     DEFENDANTS knew that the PRODUCTS manufactured, distributed, and/or  
8 offered for sale or use by DEFENDANTS in California contained the LISTED CHEMICAL.

9           53.     The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
10 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
11 during the reasonably foreseeable use of the PRODUCTS.

12          54.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
13 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
14 by 27 CCR § 25602(b) (formerly, 22 CCR § 12601(b)).

15          55.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
16 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
17 and/or ingestion.

18          56.     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  
21 use of PRODUCTS to individuals in the State of California.

22          57.     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 dermal contact and/or ingestion during the  
25 reasonably foreseeable use of the PRODUCTS.

26          58.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold

1 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
2 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

3 59. 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 60. 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  
8 DEFENDANTS.

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

11 **PRAYER FOR RELIEF**

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

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

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

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

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

23 Respectfully Submitted,

24 Dated: March 13, 2009

HIRST & CHANLER LLP

25  
26 By: 

Clifford A. Chanler.  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.