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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

RG 07350981

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

15 Plaintiff,

16 v.

17 TOYS "R" US, INC.; and DOES 1 through
18 150, inclusive,

19 Defendants.

Case No. _____

**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, found
5 in certain play food toys 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 play
8 food items for children that defendants manufacture, distribute and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the play food
11 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 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 pretend food items for children
25 containing Di(2-ethylhexyl)phthalate including, but not limited to, *Just Like Home Bologna*
26 *Sandwich, #95051, (#8 01725 95054 6)*. All such pretend food items containing the LISTED
27 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

PARTIES

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

11. Defendant TOYS "R" US, INC. is a person doing business within the meaning of California Health & Safety Code § 25249.11.

12. TOYS "R" US, Inc. manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code § 25249.11.

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

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

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

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

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

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

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
17 22 CCR §#12601(b).

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

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

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

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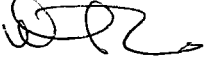
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: October 12, 2007

Respectfully Submitted,

HIRST & CHANLER LLP



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