

1 Christopher M. Martin, State Bar No. 186021  
HIRST & CHANLER LLP  
2 566 W. Adams, Suite 450  
Chicago, IL 60521  
3 Telephone: (312) 376-1801  
Facsimile: (312) 376-1804  
4

5 Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.

ENDORSED  
FILED  
ALAMEDA COUNTY  
FEB 11 2008

By Marcus Plong

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

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

Plaintiff,

v.

STK INTERNATIONAL, INC.; SAVE MART  
SUPERMARKETS; FOOD MAXX; and DOES  
1 through 150, inclusive,

Defendants.

Case No. \_\_\_\_\_

08370704

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)  
5 found in bibs 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 (DEHP) present in or on  
8 certain bibs that defendants manufacture, distribute, and/or offer for sale to consumers throughout  
9 the State of California.

10 3. High levels of DEHP are commonly found in and on bibs that defendants  
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

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

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

22 6. Defendants manufacture and sell bibs containing DEHP including, but not limited  
23 to, *My Baby Products 3pc PVC Baby Bibs, BI-232 (#7 88914 30437 6)*, which contain excessive  
24 levels of the LISTED CHEMICAL. All such bibs containing the LISTED CHEMICAL shall  
25 hereinafter be referred to as the "PRODUCTS."

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

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

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

9 **PARTIES**

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

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

16 12. STK manufactures, distributes, and/or offers the PRODUCTS for sale or use in the  
17 State of California or implies by its conduct that it manufactures, distributes, and/or offers the  
18 PRODUCTS for sale or use in the State of California.

19 13. Defendant SAVE MART SUPERMARKETS (SAVE MART) is a person doing  
20 business within the meaning of California Health & Safety Code §25249.11.

21 14. SAVE MART manufactures, distributes, and/or offers the PRODUCTS for sale or  
22 use in the State of California or implies by its conduct that it manufactures, distributes, and/or  
23 offers the PRODUCTS for sale or use in the State of California.

24 15. Defendant FOOD MAXX is a person doing business within the meaning of  
25 California Health & Safety Code §25249.11.

26 16. FOOD MAXX manufactures, distributes and/or offers the PRODUCTS for sale or  
27 use in the State of California or implies by its conduct that it manufactures, distributes and/or  
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1 offers the PRODUCTS for sale or use in the State of California.

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

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

8 19. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons  
9 doing business within the meaning of California Health & Safety Code §25249.11.

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

13 21. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing  
14 business within the meaning of California Health & Safety Code §25249.11.

15 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
16 of California.

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

22 24. STK, SAVE MART, FOOD MAXX, MANUFACTURING DEFENDANTS,  
23 DISTRIBUTING DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
24 collectively be referred to hereinafter as "DEFENDANTS."

25 **VENUE AND JURISDICTION**

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

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

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

14  
15 **FIRST CAUSE OF ACTION**

16 **(Violation of Proposition 65)**

17 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
18 Paragraphs 1 through 27, inclusive.

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

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

26 31. On November 20, 2007, a sixty-day notice of violation, together with the requisite  
27 certificate of merit, was provided to STK, SAVE MART, FOOD MAXX, and various public  
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1 enforcement agencies stating that as a result of DEFENDANTS' sale of PRODUCTS, purchasers  
2 and users in the State of California were being exposed to the LISTED CHEMICAL resulting from  
3 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
4 first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

5 32. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
6 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
7 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
8 violation of California Health & Safety Code §25249.6 has continued to occur beyond  
9 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
10 believes that such violations will continue to occur into the future.

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

14 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
15 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
16 limits.

17 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
18 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
19 CHEMICAL.

20 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
21 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
22 the reasonably foreseeable use of the PRODUCTS.

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

26 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
27 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
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1 and/or ingestion.

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

6 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
7 consumers and/or other individuals in the State of California who were or who could become  
8 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
9 reasonably foreseeable use of the PRODUCTS.

10 41. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
11 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
12 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by  
13 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,  
14 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

18 43. As a consequence of the above-described acts, California Health & Safety Code  
19 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
20 DEFENDANTS.

21 44. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
22 set forth hereinafter.

23 **PRAYER FOR RELIEF**

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

25 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess  
26 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each  
27 violation alleged herein;  
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1           2.       That the Court, pursuant to California Health & Safety Code §25249.7(a),  
 2 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,  
 3 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and  
 4 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to  
 5 the LISTED CHEMICAL;

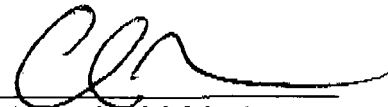
6           3.       That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

7           4.       That the Court grant such other and further relief as may be just and proper.  
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9 Dated: February 7, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin  
 Attorneys for Plaintiff  
 ANTHONY E. HELD, PH.D., P.E.

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