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FILED  
Superior Court Of California  
Sacramento

Dennis Jones, Executive  
Officer

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By \_\_\_\_\_, Deputy

Case Number: Department  
24-2008-0014 Assignments MC-035  
Case Management 39  
Law and Motion 54  
Minors Compromise 31

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

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

14 Plaintiff,

15 v.

16 DARICE, INC.; and DOES 1 through 150,  
17 inclusive,

18 Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**

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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 vinyl bathroom 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 vinyl  
8 bathroom toys 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 vinyl  
11 bathroom toys that defendants manufacture, distribute and/or offer for sale to consumers  
12 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 October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a  
19 chemical known to cause reproductive and developmental 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 October 24, 2004. (*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 vinyl bathroom toys for children  
25 containing Di(2-ethylhexyl)phthalate including, but not limited to, *3 5/8" Rubber Duck, Bright*  
26 *Yellow*, M5102 (#6 52695 82063 2). All such vinyl bathroom toys containing the LISTED  
27 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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1 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
2 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
3 believes that such violations will continue to occur into the future.

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  
9 limits.

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

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

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

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

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

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

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

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

11 39. As a consequence of the above-described acts, California Health & Safety Code  
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

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

16 **PRAYER FOR RELIEF**

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

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

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

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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: May 20, 2008

Respectfully Submitted,  
HIRST & CHANLER LLP  
  
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David Lavine  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.