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Officer
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By _____, Deputy
Case Number:
24-2006-0020065-CU-MC-GDS

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

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

Plaintiff,

v.

MICHAELS STORES, INC.; and DOES 1
through 150, inclusive,

Defendants.

Case No. _____

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, found
5 in certain vinyl bathroom toys/children's items 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/children's items 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 vinyl
11 bathroom toys/children's items that defendants manufacture, distribute and/or offer for sale to
12 consumers 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. (27
22 *CCR* § 12000(c); *Cal. Health & Safety Code* § 25249.8.) Di(2-ethylhexyl)phthalate shall
23 hereinafter be referred to as the "LISTED CHEMICAL."

24 6. Defendants manufacture, distribute and/or sell vinyl bathroom toys/children's items
25 containing di(2-ethylhexyl)phthalate, including, but not limited to, *Easter Collection Ducks*,
26 *412281 (#7 63750 13570 4)*. All such vinyl bathroom toys/children's items containing the
27 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."
28

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 to
14 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 27 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
28

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,
6 manufactured, distributed and/or sold by DEFENDANTS without “clear and reasonable warning,”
7 have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy
8 or adequate remedy at law.

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

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

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

17 **PRAYER FOR RELIEF**

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

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

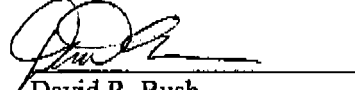
22 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
24 distributing and/or offering the PRODUCTS for sale or use in California, without providing “clear
25 and reasonable warnings” as defined by 27 CCR § 12601, as to the harms associated with
26 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: August 22, 2008

Respectfully Submitted,
HIRST & CHANLER LLP



David R. Bush
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.