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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION  
11

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

14 Plaintiff,  
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16 v.  
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18 BIG LOTS, INC.; BIG LOTS STORES, INC.;  
and DOES 1 through 150, inclusive,  
19

20 Defendants.  
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**ENDORSED  
FILED**  
Superior Court of California  
County of San Francisco

OCT 8 - 2008

GORDON PARK-LI, Clerk  
BY: CRISTINA BAUTISTA  
Deputy Clerk

CGC-08-480730

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 smocks, vinyl bathroom toys, sporting toys and other children's items and  
6 accessories sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
8 citizens of California about their exposure to di(2-ethylhexyl)phthalate present in or on certain in  
9 certain vinyl smocks, vinyl bathroom toys, sporting toys and other children's items and accessories  
10 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
11 California.

12 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the in certain  
13 vinyl smocks, vinyl bathroom toys, sporting toys and other children's items and accessories that  
14 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
15 California.

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

21 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a  
22 chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
23 became subject to the warning requirement one year later and was therefore subject to the "clear and  
24 reasonable warning" requirements of Proposition 65, beginning on January 1, 1989. (*27 CCR*  
25 *§27001; Cal. Health & Safety Code §25249.8.*) Di(2-ethylhexyl)phthalate shall hereinafter be  
26 referred to as the "LISTED CHEMICAL."  
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1           12.    BIG LOTS, INC. manufactures, distributes and/or offers the PRODUCTS for sale or  
2 use in the State of California, or implies by its conduct that it manufactures, distributes and/or offers  
3 the PRODUCTS for sale or use in the State of California.

4           13.    Defendant BIG LOTS STORES, INC. is a person in the course of doing business  
5 within the meaning of California Health & Safety Code §25249.11.

6           14.    BIG LOTS STORES, INC. manufactures, distributes and/or offers the PRODUCTS  
7 for sale or use in the State of California, or implies by its conduct that it manufactures, distributes  
8 and/or offers the PRODUCTS for sale or use in the State of California.

9           15.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons  
10 in the course of doing business within the meaning of California Health & Safety Code §25249.11.

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

15           17.    Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons in  
16 the course of doing business within the meaning of California Health & Safety Code §25249.11.

17           18.    DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
18 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the  
19 State of California.

20           19.    Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons in the  
21 course of doing business within the meaning of California Health & Safety Code §25249.11.

22           20.    RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
23 of California.

24           21.    At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
25 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
26 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of  
27 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When  
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1 defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

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

6 29. On April 22, 2008, a sixty-day notice of violation, together with the requisite  
7 certificate of merit, was provided to BIG LOTS, INC., BIG LOTS STORES, INC., and various  
8 public enforcement agencies, stating that as a result of DEFENDANTS’ sale of the PRODUCTS,  
9 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
10 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
11 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
12 such toxic exposures.

13 30. On July 10, 2008, an additional sixty-day notice of violation, together with the  
14 requisite certificate of merit, was provided to BIG LOTS, INC., BIG LOTS STORES, INC., and  
15 various public enforcement agencies, stating that as a result of DEFENDANTS’ sale of the  
16 PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED  
17 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
18 individual  
19 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
20 such toxic exposures.

21 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the  
22 PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6, and  
23 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
24 violation of California Health & Safety Code §25249.6 has continued to occur beyond  
25 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
26 believes that such violations will continue to occur into the future.

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

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

6           34.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
7 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
8 CHEMICAL.

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

12          36.     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 by  
14 27 CCR §25601(b).

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

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

22          39.     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 ingestion during the reasonably  
25 foreseeable use of the PRODUCTS.

26          40.     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  
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1 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by  
2 DEFENDANTS without "clear and reasonable warning." have suffered, and continue to suffer,  
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 42. As a consequence of the above-described acts, California Health & Safety Code  
8 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

9 43. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
10 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 each  
15 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 and/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 harm associated with exposures  
20 to the LISTED CHEMICAL;

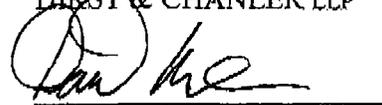
21 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

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24 Dated: October 8, 2008

Respectfully Submitted,  
HIRST & CHANLER LLP



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

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