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

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

14 Plaintiff,

15 v.

16 UPD, INC., NATIONAL STORES, INC.;  
17 FALLAS-PAREDES; and DOES 1 through  
18 150, inclusive,

19 Defendants.

Case No. 34-2008-00018056

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**

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6. Defendants manufacture, distribute and/or sell backpacks containing Di(2-ethylhexyl)phthalate, including, but not limited to, *Pooh PVC Drawstring Mini Sling Backpack*, # *WPSLI-Z* (#6 78634 24318 8). All such backpacks containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

12 **PARTIES**

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

17 11. Defendants UPD, INC., NATIONAL STORES, INC., and FALLAS-PAREDES are  
18 persons in the course of doing business within the meaning of California Health & Safety Code §  
19 25249.11.

20 12. UPD, INC. manufactures, distributes and/or offers the PRODUCTS for sale or use  
21 in the State of California or implies by its conduct that it manufactures, distributes and/or offers  
22 the PRODUCTS for sale or use in the State of California.

23 13. NATIONAL STORES, INC., and FALLAS-PAREDES sell or offer for sale or use  
24 in the State of California or imply by their conduct that they sell or offer for sale the PRODUCTS  
25 for sale or use on the State of California.

26 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
27 in the course of doing business within the meaning of California Health & Safety Code §  
28 25249.11.

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

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

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

10          18.     Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons in the  
11 course of doing business within the meaning of California Health & Safety Code § 25249.11.

12          19.     RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
13 of California.

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

19          21.     UPD, INC., NATIONAL STORES, INC, FALLAS-PAREDES,  
20 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL  
21 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as  
22 "DEFENDANTS."

23                                   **VENUE AND JURISDICTION**

24          22.     Venue is proper in the Sacramento County Superior Court, pursuant to Code of  
25 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,  
26 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
27 County of Sacramento, and/or because DEFENDANTS conducted, and continue to conduct,  
28

1 business in this County with respect to the PRODUCTS.

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

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

12 **FIRST CAUSE OF ACTION**

13 **(Violation of Proposition 65)**

14 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
15 Paragraphs 1 through 23, inclusive.

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

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

24 28. On May 23, 2008, a sixty-day notice of violation, together with the requisite  
25 certificate of merit, was provided to UPD, INC., NATIONAL STORES, INC., and FALLAS-  
26 PAREDES, and various public enforcement agencies, stating that as a result of DEFENDANTS’  
27 sale of the PRODUCTS, purchasers and users in the State of California were being exposed to the  
28 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without

1 the individual purchasers and users first having been provided with a “clear and reasonable  
2 warning” regarding such toxic exposures.

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

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

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

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

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

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
23 by 27 CCR § 25601(b).

24 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
26 and ingestion.



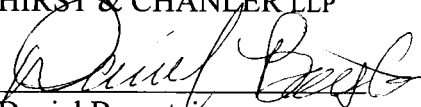
1 distributing and/or offering the PRODUCTS for sale or use in California, without providing "clear  
2 and reasonable warnings" as defined by 22 CCR § 12601, as to the harms associated with  
3 exposures to the LISTED CHEMICAL;

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

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

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7 Dated: August 4, 2008

Respectfully Submitted,  
HIRST & CHANLER LLP

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10 Daniel Bornstein  
11 Attorneys for Plaintiff  
12 ANTHONY E. HELD, PH.D., P.E.  
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