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Department  
Assignments  
Case Management 39  
Law and Motion 54  
Minors Compromise 22

FILED  
Superior Court Of California,  
Sacramento  
Dennis Jones, Executive  
Officer  
08/26/2008  
Prover  
By , Deputy  
Case Number:  
24-2008-00020367-CU-MC-005

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

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

Plaintiff,

v.

TUESDAY MORNING CORPORATION; 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 inflatable vinyl toys/ children's items 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 inflatable vinyl toys/ children's items that defendants manufacture, distribute and/or offer  
9 for sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on inflatable vinyl toys/ children's  
11 items that defendants manufacture, distribute and/or offer for sale to consumers throughout the  
12 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 DEHP as a chemical known to  
19 cause birth defects and other reproductive harm. DEHP became subject to the warning  
20 requirement one year later and was therefore subject to the "clear and reasonable warning"  
21 requirements of Proposition 65, beginning on October 24, 2004. (*CCR §27001(c); Cal. Health &*  
22 *Safety Code §25249.8.*) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, and/or sell children's items containing DEHP  
24 including, but not limited to, *5 Piece Soft Sport Set, (# 6 78565 20692 4)*, which contain excessive  
25 levels of the LISTED CHEMICAL. All such children's items containing the LISTED CHEMICAL  
26 shall hereinafter be referred to as the "PRODUCTS."

27 7. Defendants' failure to warn consumers and/or other individuals in the State of  
28

1 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale  
2 of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
3 conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

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

15 11. Defendant TUESDAY MORNING CORPORATION (TUESDAY MORNING) is a  
16 person doing business within the meaning of California Health & Safety Code §25249.11.

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

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

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

26 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons  
27 doing business within the meaning of California Health & Safety Code §25249.11.  
28

1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
3 the State of California.

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

6 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
7 of California.

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

13 20. TUESDAY MORNING CORPORATION, MANUFACTURER DEFENDANTS,  
14 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
15 collectively be referred to hereinafter as "DEFENDANTS."

#### 16 VENUE AND JURISDICTION

17 21. Venue is proper in the Sacramento County Superior Court, pursuant to Code of  
18 Civil Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
19 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
20 Sacramento and/or because DEFENDANTS conducted, and continue to conduct, business in this  
21 County with respect to the PRODUCTS.

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

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation, or  
28

1 association that either are citizens of the State of California, have sufficient minimum contacts in  
 2 the State of California, or otherwise purposefully avail themselves of the California market.  
 3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
 4 courts consistent with traditional notions of fair play and substantial justice.

5  
 6 **FIRST CAUSE OF ACTION**

7 **(Violation of Proposition 65)**

8 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
 9 Paragraphs 1 through 27, inclusive.

10 25. The citizens of the State of California have expressly stated in the Safe Drinking  
 11 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*  
 12 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth  
 13 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

14 26. Proposition 65 states, "No person in the course of doing business shall knowingly  
 15 and intentionally expose any individual to a chemical known to the state to cause cancer or  
 16 reproductive toxicity without first giving clear and reasonable warning to such individual..." (*Id.*)

17 27. On May 23, 2008, a sixty-day notice of violation, together with the requisite  
 18 certificate of merit, was provided to TUESDAY MORNING, and various public enforcement  
 19 agencies stating that as a result of DEFENDANTS' sale of PRODUCTS, purchasers and users in  
 20 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
 21 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
 22 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
 24 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
 25 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use in  
 26 violation of California Health & Safety Code §25249.6 has continued to occur beyond  
 27 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
 28

1 believes that such violations will continue to occur into the future.

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

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

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

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

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

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

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

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
25 consumers and/or other individuals in the State of California who were or who could become  
26 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
27 reasonably foreseeable use of the PRODUCTS.  
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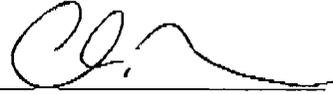
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4. That the Court grant such other and further relief as may be just and proper.

Dated: August 25, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



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