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SUPERIOR COURT

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

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

DISNEY STORES WORLDWIDE; THE
WALT DISNEY COMPANY; THE
CHILDREN'S PLACE RETAIL STORES,
INC.; and DOES 1 through 150, inclusive,

Defendants.

Case No. **CGC-08-480261**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 children's sporting items sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 citizens of California about their exposure to di(2-ethylhexyl)phthalate present in or on certain
8 sporting toys for children 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 children's
11 sporting items that defendants manufacture, distribute and/or offer for sale to consumers throughout
12 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 birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the "clear and
21 reasonable warning" requirements of Proposition 65, beginning on January 1, 1989. (*22 CCR*
22 *§27001; 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 sporting items for children containing
25 Di(2-ethylhexyl)phthalate including, but not limited to, *Baseball Set Cars (#4 90862 60011 9)*. All
26 such children's sporting items containing the LISTED CHEMICAL shall hereinafter be referred to
27 as the "PRODUCTS."

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

1 California about their exposure to the LISTED CHEMICAL in conjunction with defendants' sale of
2 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 citizens
13 through the elimination or reduction of toxic exposures from consumer products, and brings this
14 action in the public interest pursuant to California Health & Safety Code §25249.7.

15 11. Defendant DISNEY STORES WORLDWIDE is a person in the course of doing
16 business within the meaning of California Health & Safety Code §25249.11.

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

20 13. Defendant THE WALT DISNEY COMPANY is a person in the course of doing
21 business within the meaning of California Health & Safety Code §25249.11.

22 14. THE WALT DISNEY COMPANY manufactures, distributes and/or offers the
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
24 distributes and/or offers the PRODUCTS for sale or use in the State of California.

25 15. Defendant THE CHILDREN'S PLACE RETAIL STORES, INC. is a person in the
26 course of doing business within the meaning of California Health & Safety Code §25249.11.

27 16. THE CHILDREN'S PLACE RETAIL STORES, INC. manufactures, distributes
28 and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct

1 that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of
2 California.

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

5 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
6 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage
7 in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
8 more of the PRODUCTS for sale or use in the State of California.

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

11 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
12 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the
13 State of California.

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

16 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
17 of California.

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

23 24. DISNEY STORES WORLDWIDE, THE WALT DISNEY COMPANY, THE
24 CHILDREN’S PLACE RETAIL STORES, INC., MANUFACTURER DEFENDANTS,
25 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
26 collectively be referred to hereinafter as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 25. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
3 Civil Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because
4 one or more instances of wrongful conduct occurred, and continues to occur, in the City and County
5 of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct, business in
6 this County with respect to the PRODUCTS.

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

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

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 27, inclusive.

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

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

1 31. On May 23, 2008, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to DISNEY STORES WORLDWIDE, THE WALT DISNEY
3 COMPANY, THE CHILDREN'S PLACE RETAIL STORES, INC., and various public
4 enforcement agencies, stating that as a result of DEFENDANTS' sale of the PRODUCTS,
5 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL
6 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
7 purchasers and users first having been provided with a "clear and reasonable warning" regarding
8 such toxic exposures.

9 32. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the
10 PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6, and
11 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
12 violation of California Health & Safety Code §25249.6 has continued to occur beyond
13 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
14 believes that such violations will continue to occur into the future.

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

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

20 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
21 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
22 CHEMICAL.

23 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
24 expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
25 reasonably foreseeable use of the PRODUCTS.

26 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
27 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
28 22 CCR §25601(b).

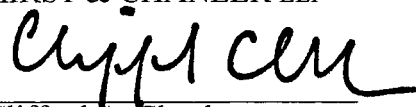
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2. That the Court, pursuant to California Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing, distributing and/or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 22 CCR §25601, as to the harm associated with exposures to the LISTED CHEMICAL;

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: September 25, 2008

Respectfully Submitted,
HIRST & CHANLER LLP

Clifford A. Chanler
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.