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SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 AUG 25 AM 12:58

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BY:

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1 Christopher M. Martin, State Bar No. 186021
2 HIRST & CHANLER LLP
3 566 W. Adams, Suite 450
4 Chicago, IL 60521
5 Telephone: (312) 376-1801
6 Facsimile: (312) 376-1804

7 Attorneys for Plaintiff
8 ANTHONY E. HELD, PH.D., P.E.

9 **CASE MANAGEMENT CONFERENCE SET** SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN FRANCISCO

11 JAN 23 2009 - 9⁰⁰ AM

UNLIMITED CIVIL JURISDICTION

12 **DEPARTMENT 212**

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

14 Plaintiff,

15 v.

16 J.J. PARAMOUNT INTERNATIONAL, INC.;
17 PARAMOUNT IMPORTS AND
18 WHOLESALE; and DOES 1 through 150,
19 inclusive,

20 Defendants.

Case No. **08C-08-479090**

**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, *ParaMAXX Arm Band*, (# 7 43016 69894 5), 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
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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. Defendants J.J. PARAMOUNT INTERNATIONAL, INC. and PARAMOUNT
16 IMPORTS AND WHOLESALE (together "PARAMOUNT") is a person doing business within the
17 meaning of California Health & Safety Code §25249.11.

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

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

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

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

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

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

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

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

14 20. J.J. PARAMOUNT INTERNATIONAL, INC., PARAMOUNT IMPORTS AND
15 WHOLESALE, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
16 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
17 "DEFENDANTS."

18 VENUE AND JURISDICTION

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

24 22. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all
26 causes except those given by statute to other trial courts." The statute under which this action is
27 brought does not specify any other basis of subject matter jurisdiction.
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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/or 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 §25601(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/or 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
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
2 reasonably 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/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
6 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,
7 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

16 **PRAYER FOR RELIEF**

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

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

21 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
22 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
23 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
24 reasonable warnings" as defined by 27 CCR §25601, as to the harms associated with exposures to
25 the LISTED CHEMICAL;

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

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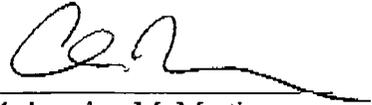
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4. That the Court grant such other and further relief as may be just and proper.

Dated: August 25, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



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