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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES  
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 NAVAJO MANUFACTURING COMPANY;  
18 and DOES 1 through 150, inclusive,

19 Defendants.

Case No. BC404532

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 sporting toys/children’s 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/children’s items that defendants manufacture, distribute and/or offer for sale to  
9 consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the sporting  
11 toys/children’s items that defendants manufacture, distribute and/or offer for sale to consumers  
12 throughout 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  
21 and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (*27 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 offer for sale sporting toys/children’s  
25 items containing di(2-ethylhexyl)phthalate including, but not limited to, *Sport Soft Ball (#0 24291*  
26 *25257 3)*. All such sporting toys/children’s items containing the LISTED CHEMICAL shall  
27 hereinafter be referred to as the “PRODUCTS.”

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

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

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

11 **PARTIES**

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

16 11. Defendant NAVAJO MANUFACTURING COMPANY ("NAVAJO  
17 MANUFACTURING") is a person in the course of doing business within the meaning of California  
18 Health & Safety Code §25249.11.

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

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

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

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

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

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

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

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

15           20. NAVAJO MANUFACTURING, MANUFACTURER DEFENDANTS,  
16 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
17 collectively be referred to hereinafter as “DEFENDANTS.”

### 18   VENUE AND JURISDICTION

19           21. Venue is proper in the Los Angeles 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 Los  
22 Angeles 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 California  
25 Constitution Article VI, §10, which grants the Superior Court “original jurisdiction in all causes  
26 except those given by statute to other trial courts.” The statute under which this action is brought  
27 does not specify any other basis of subject matter jurisdiction.

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

7                                   **FIRST CAUSE OF ACTION**

8                                   **(Violation of Proposition 65)**

9           24.     Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
10 Paragraphs 1 through 23, inclusive.

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

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

19           27.     On July 10, 2008, a sixty-day notice of violation, together with the requisite  
20 certificate of merit, was provided to NAVAJO MANUFACTURING, and various public  
21 enforcement agencies, stating that as a result of DEFENDANTS' sale of the PRODUCTS,  
22 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
23 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
24 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
25 such toxic exposures.

26           28.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of the  
27 PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6, and  
28

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

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

8 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state 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 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 by  
18 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 and  
21 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  
28

1 exposed to the LISTED CHEMICAL through dermal contact and ingestion during the reasonably  
2 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 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 DEFENDANTS.

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

15 **PRAYER FOR RELIEF**

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

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

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

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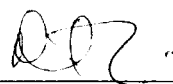
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 22, 2008

Respectfully Submitted,  
HIRST & CHANLER LLP



\_\_\_\_\_  
David Lavine  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.