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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

FEB 18 2009

CLAW CARLSON, Clerk of the Court

BY           N. DORFMAN           DEPUTY

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

30-2009

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

Plaintiff,

v.

VOLUME DISTRIBUTORS, INC.; and DOES  
1-150, inclusive,

Defendants.

Case No. \_\_\_\_\_

00118720

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

JUDGE STEVEN L. PERK  
DEPT. C32

**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  
5 found in vinyl bathroom toys/children’s items sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to di(2-ethylhexyl) phthalate present in or on  
8 certain vinyl bathroom 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 di(2-ethylhexyl) phthalate are commonly found in vinyl bathroom  
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  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
19 a 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  
22 *CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED  
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell vinyl bathroom toys/children’s  
26 items containing excessive levels of the LISTED CHEMICAL including, but not limited to, the  
27 *Bébelle Bath Sponge with Animal Head, Item # CHN-1844 (#7 49732 01844 9)*. All such vinyl  
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1 bathroom toys/children's items containing the LISTED CHEMICAL shall hereinafter be referred  
2 to as the "PRODUCTS."

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

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

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

13 **PARTIES**

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

18 12. Defendant VOLUME DISTRIBUTORS, INC. ("VOLUME DISTRIBUTORS") is  
19 a person doing business within the meaning of California Health & Safety Code § 25249.11.

20 13. Defendant VOLUME DISTRIBUTORS manufactures, distributes and/or offers  
21 the PRODUCTS for sale or use in the State of California or implies by its conduct that it  
22 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

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

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





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

7 31. 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 32. 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  
12 LISTED CHEMICAL.

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

16 34. 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 § 25602(b).

19 35. 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 36. 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  
25 use of PRODUCTS to individuals in the State of California.

26 37. 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 38. 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  
6 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
7 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

8 39. 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 40. 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 41. Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of  
15 them, as 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  
20 each 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  
24 and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with  
25 exposures to the LISTED CHEMICAL;

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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.

Respectfully Submitted,  
HIRST & CHANLER LLP

Dated: February 17, 2009

By:   
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David Lavine  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.