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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**Dennis Jones, Executive**  
**Officer**  
**01/13/2009**  
**amacias**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2008-00031806-CU-MC-GDS**

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

Department  
Assignments  
Case Management 45  
Law and Motion 53  
Minors Compromise 42

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

Plaintiff,

v.

THE BEISTLE COMPANY; and DOES 1-  
150, inclusive,

Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1  
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 inflatable soft vinyl balls 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 inflatable soft vinyl balls 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 and inflatable  
11 soft vinyl balls 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 inflatable soft vinyl balls  
26 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *Kiss*  
27 *My Class Goodbye Beach Ball 24*,” No. 50002 (#3 34689 50002 5). All such inflatable soft  
28

1 vinyl balls containing the LISTED CHEMICAL shall hereinafter be referred to as the  
2 “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 THE BEISTLE COMPANY (“BEISTLE”) is a person doing business  
19 within the meaning of California Health & Safety Code § 25249.11.

20 13. Defendant BEISTLE manufactures, distributes and/or offers the PRODUCTS for  
21 sale or use in the State of California or implies by its conduct that it manufactures, distributes  
22 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 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 17. 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  
5 the State of California.

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

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

10 20. 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  
12 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
13 each of the fictitiously named defendants is responsible for the acts and occurrences herein  
14 alleged. When ascertained, their true names shall be reflected in an amended complaint.

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

18 **VENUE AND JURISDICTION**

19 22. 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,  
21 because one or more instances of wrongful conduct occurred, and continues to occur, in the  
22 County of Sacramento and/or because DEFENDANTS conducted, and continue to conduct,  
23 business in this County with respect to the PRODUCTS.

24 23. 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  
26 all causes except those given by statute to other trial courts.” The statute under which this action  
27 is brought does not specify any other basis of subject matter jurisdiction.

28



1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
2 believes that such violations will continue to occur into the future.

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

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

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

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

15 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
17 by 27 CCR § 25602(b).

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

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

25 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and/or other individuals in the State of California who were or who could become  
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
28 reasonably foreseeable use of the PRODUCTS.

1           38.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
2 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
3 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
4 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
5 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

9           40.     As a consequence of the above-described acts, California Health & Safety Code  
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
11 DEFENDANTS.

12           41.     Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of  
13 them, as set forth hereinafter.

14                                   **PRAYER FOR RELIEF**

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

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

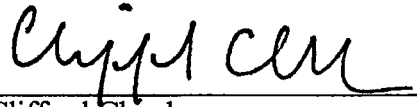
19           2.     That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
20 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,  
21 distributing or offering the PRODUCTS for sale or use in California, without providing “clear  
22 and reasonable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

Dated: January 6, 2009

Respectfully Submitted,  
HIRST & CHANLER LLP  
By:   
Clifford Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.