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County of Santa Clara Superior Court
San Jose, California
G. Duarte

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION

12 . 108 CV 131552

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

Case No. _____

14 Plaintiff,

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

15 v.

16 TRADE WEST, INC.; and DOES 1 through
17 150, inclusive,

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

18 Defendants.

19 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 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 that defendants manufacture, distribute, and/or offer for sale to
9 consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on inflatable vinyl toys that
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 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 §12000(c); Cal. Health &*
22 *Safety Code §25249.8.*) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture and sell inflatable vinyl toys containing DEHP including,
24 but not limited to, *Inflatable Tropical Starfish Ring Game, #52805 (#0 87205 52805 8)*, which
25 contain excessive levels of the LISTED CHEMICAL. All such inflatable vinyl toys containing the
26 LISTED CHEMICAL 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. ANTHONY E. HELD, PH.D., P.E. is a citizen living in the State of California who
12 is dedicated to protecting the health of California citizens through the elimination or reduction of
13 toxic exposures from consumer products, and brings this action in the public interest pursuant to
14 California Health & Safety Code §25249.7.

15 11. Defendant TRADE WEST, INC. ("TRADE WEST") is a person doing business
16 within the meaning of California Health & Safety Code §25249.11.

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

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

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

26 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons
27 doing business within the meaning of California Health & Safety Code §25249.11.
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1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
3 the State of California.

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

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

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

13 20. TRADE WEST, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
15 hereinafter as "DEFENDANTS."

16 **VENUE AND JURISDICTION**

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

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

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

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65)**

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

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

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

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

22 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
24 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
25 violation of California Health & Safety Code §25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.
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1 29. After receipt of the claims asserted in the sixty-day notice of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
3 of action against DEFENDANTS under Proposition 65.

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

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

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

13 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
15 by 22 CCR §12601(b).

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

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

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

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

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

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

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

13 **PRAYER FOR RELIEF**

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

- 15 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
 16 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
 17 violation alleged herein;
- 18 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
 19 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
 20 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
 21 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to
 22 the LISTED CHEMICAL;
- 23 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 24 4. That the Court grant such other and further relief as may be just and proper.

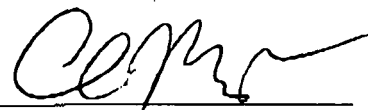
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Dated: December 16, 2008

Respectfully Submitted,

HIRST & CHANLER LLP



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