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**FILED**  
FEB 05 2009

ALEX CALVO, CLERK  
BY MICHELLE IRIS  
DEPUTY, SANTA CRUZ COUNTY

FILED BY FACSIMILE

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CRUZ  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

THE NORTHWEST COMPANY; and DOES 1  
through 150, inclusive,

Defendants.

Case No. CV1162711

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 children's vinyl pillows 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 children's vinyl pillows 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 children's vinyl pillows 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 children's vinyl pillows containing DEHP  
24 including, but not limited to, *Nascar Jeff Gordon Pillow, NW14052306 (#0 87918 81425 7)*, which  
25 contain excessive levels of the LISTED CHEMICAL. All such children's vinyl pillows containing  
26 the 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 THE NORTHWEST COMPANY ("NORTHWEST") is a person doing  
16 business within the meaning of California Health & Safety Code §25249.11.

17 12. NORTHWEST 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. NORTHWEST, 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 Cruz County Superior Court, pursuant to Code of Civil  
18 Procedure §§394, 395, 395.5, because this Court is a court of competent jurisdiction, because one  
19 or more instances of wrongful conduct occurred, and continues to occur, in the County of Santa  
20 Cruz and/or because DEFENDANTS conducted, and continue to conduct, business in this County  
21 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 November 7, 2008, a sixty-day notice of violation, together with the requisite  
17 certificate of merit, was provided to NORTHWEST 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  
28

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: January 26, 2009

Respectfully Submitted,

HIRST & CHANLER LLP



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