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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF CONTRA COSTA  
10 UNLIMITED CIVIL JURISDICTION

11  
12 ANTHONY E. HELD, Ph.D., P.E.,

13 Plaintiff,

14 v.

15 GOLD, INC.; TARGET CORPORATION;  
and DOES 1-150, inclusive,

16 Defendants.  
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Case No. C09 00563

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 7

SUMMONS ISSUED

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 bath books and pre-walk baby shoes 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 certain  
8 bath books and pre-walk baby shoes that defendants manufacture, distribute and/or offer for sale  
9 to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on bath  
11 books and pre-walk baby shoes that defendants manufacture, distribute, and/or offer for sale to  
12 consumers 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: (a) bath books containing  
26 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Baby Love Bath*  
27 *Book, #2975a (#8 41769 03005 7)*, and/or (b) pre-walk baby shoes, containing excessive levels  
28 of the LISTED CHEMICAL including, but not limited to, the *Circo Sneakers – Tan (NB) #030-*

1 06-2361 (#07 153 44 3080 9). All such bath books and pre-walk baby shoes containing the  
2 LISTED CHEMICAL shall hereinafter be referred 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 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 GOLD, INC. ("GOLD") is a person doing business within the meaning  
19 of California Health & Safety Code § 25249.11.

20 13. Defendant GOLD 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. Defendant TARGET CORPORATION ("TARGET") is a person doing business  
24 within the meaning of California Health & Safety Code § 25249.11.

25 15. Defendant TARGET manufactures, distributes, and/or offers the PRODUCTS for  
26 sale or use in the State of California or implies by its conduct that it manufactures, distributes  
27 and/or offers the PRODUCTS for sale or use in the State of California.



1 County of Contra Costa and/or because DEFENDANTS conducted, and continue to conduct,  
2 business in this County with respect to the PRODUCTS.

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

7 26. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
9 association that either are citizens of the State of California, have sufficient minimum contacts in  
10 the State of California, or otherwise purposefully avail themselves of the California market.  
11 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by California  
12 courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 – Against All Defendants)**

15 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 26, inclusive.

17 28. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
19 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
20 birth defects and other reproductive harm.” (*Cal. Health & Safely Code § 25249.6.*)

21 29. Proposition 65 states, “No person in the course of doing business shall knowingly  
22 and intentionally expose any individual to a chemical known to the state to cause cancer or  
23 reproductive toxicity without first giving clear and reasonable warning to such individual...”  
24 (*Id.*)

25 30. On May 23, 2008, a sixty-day notice of violation, together with the requisite  
26 certificate of merit, was provided to TARGET and various public enforcement agencies stating  
27 that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the  
28 State of California were being exposed to the LISTED CHEMICAL resulting from the

1 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
2 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 31. On November 28, 2008, a sixty-day notice of violation, together with the requisite  
4 certificate of merit, was provided to GOLD, TARGET and various public enforcement agencies  
5 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in  
6 the State of California were being exposed to the di(2-ethylhexyl)phthalate resulting from the  
7 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
8 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

9 32. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
10 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
11 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
12 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
13 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
14 believes that such violations will continue to occur into the future.

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

18 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
19 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
20 limits.

21 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
22 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
23 LISTED CHEMICAL.

24 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
25 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
26 during the reasonably foreseeable use of the PRODUCTS.

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

4           38.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
5 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
6 and/or ingestion.

7           39.     DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
8 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
9 accidental participation in the manufacture, distribution and/or offer for sale or use of  
10 PRODUCTS to individuals in the State of California.

11          40.     DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and/or other individuals in the State of California who were or who could become  
13 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
14 reasonably foreseeable use of the PRODUCTS.

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

20          42.     As a consequence of the above-described acts, DEFENDANTS are liable for a  
21 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
22 Safety Code § 25249.7(b).

23          43.     As a consequence of the above-described acts, California Health & Safety Code  
24 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 DEFENDANTS.

26          44.     Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
27 hereinafter.

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the  
10 LISTED CHEMICAL;

11 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

12 4. That the Court grant such other and further relief as may be just and proper.

13 Respectfully Submitted,

14 Dated: March 3, 2009

HIRST & CHANLER LLP

15  
16 By: 

17 David Lavine  
18 Attorneys for Plaintiff  
19 ANTHONY E. HELD, Ph.D., P.E.  
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