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**FILED**

**OCT 19 2009**

**KIM TURNER**, Court Executive Officer  
**MARIN COUNTY SUPERIOR COURT**  
*By: S. Hendryx, Deputy*

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

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

Plaintiff,

v.

RUBIE'S COSTUME COMPANY, INC.;  
TARGET CORPORATION; and DOES 1-150,  
inclusive,

Defendants.

Case No. CIV093325

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

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 children's bath books, children's costumes with vinyl components, children's gloves  
6 with vinyl components, children's soft animal toys with vinyl components, vinyl balls, vinyl  
7 keychains, and vinyl magnets sold in California.

8 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to  
9 warn California citizens about their exposure to di(2-ethylhexyl)phthalate present in and/or on  
10 certain children's bath books, children's costumes with vinyl components, children's gloves with  
11 vinyl components, children's soft animal toys with vinyl components, vinyl balls, vinyl  
12 keychains, and/or vinyl magnets that defendants manufacture, distribute and/or offer for sale to  
13 consumers throughout the State of California.

14 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and/or on certain  
15 children's bath books, children's costumes with vinyl components, children's gloves with vinyl  
16 components, children's soft animal toys with vinyl components, vinyl balls, vinyl keychains, and  
17 vinyl magnets that defendants manufacture, distribute and/or offer for sale to consumers  
18 throughout the State of California.

19 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
20 California Health & Safety Code § 25249.6 *et seq.* (Proposition 65), "No person in the course of  
21 doing business shall knowingly and intentionally expose any individual to a chemical known to  
22 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
23 warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

24 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
25 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
26 became subject to the warning requirement one year later and was therefore subject to the "clear  
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1 and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004.  
2 (27 CCR § 27001; Cal. Health & Safety Code § 25249.8.)

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

5 7. Defendants manufacture, distribute, and/or sell: (1) children’s bath books  
6 containing excessive levels of the LISTED CHEMICAL including, but not limited to *Baby Love*  
7 *Bath Book*, #2975a (#8 41769 03005 7); (2) children’s costumes with vinyl components  
8 containing excessive levels of the LISTED CHEMICAL including, but not limited to, *Lil’ All*  
9 *Stars! Lil’ Slugger* #11278, (0 82686 11278 9), *Toddler Costume Pony*, #240 11 3893 (#4 92401  
10 13893 0), and *Yarn Babies Caribbean Pirate* #11739 (#0 82686 11739 5); (3) children’s gloves  
11 with vinyl components including, but not limited to, *Batman Child Gauntlets*, #8151 (#0 82686  
12 08151); (4) children’s soft animal toys with vinyl components containing excessive levels of the  
13 LISTED CHEMICAL including, but not limited to *Wonderworld Rolling Butterfly Soft Toy*, Item  
14 #10798279, SW-3020 (#8 851285 230308); (4) vinyl balls containing excessive levels of the  
15 LISTED CHEMICAL including, but not limited to, *Inflatable Pumpkin Bean Bag Toss Game*  
16 #57403 (7 21773 57403 0); (5) vinyl keychains containing excessive levels of the LISTED  
17 CHEMICAL including, but not limited to, *Party Like Crazy! Flip Flop Key Chains*, #053  
18 030503 (#4 90530 30503 2); and/or (6) vinyl magnets containing excessive levels of the LISTED  
19 CHEMICAL including, but not limited to, *Mini Back to School Kit*, #081 16 1006 (#4 90811  
20 61006 0). All such children’s bath books, children’s costumes with vinyl components, children’s  
21 gloves with vinyl components, children’s soft animal toys with vinyl components, vinyl balls,  
22 vinyl keychains, and vinyl magnets containing the LISTED CHEMICAL shall hereinafter be  
23 referred to as the “PRODUCTS”.

24 8. Defendants’ failures to warn consumers and/or other individuals in the State of  
25 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sale  
26 of one or more of the PRODUCTS is a violation of Proposition 65 and subjects defendants to  
27 enjoinder of such conduct as well as civil penalties for each such violation.



1 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
2 doing business within the meaning of California Health & Safety Code § 25249.11.

3 18. 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 19. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
7 business within the meaning of California Health & Safety Code § 25249.11.

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

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

15 22. RUBIE’S COSTUME, TARGET, MANUFACTURER DEFENDANTS,  
16 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
17 collectively be referred to hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

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

24 24. 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.

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1           30.     On March 13, 2009, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to TARGET and various public enforcement agencies stating  
3 that as a result of TARGET'S sales of children's bath books, children's costumes with vinyl  
4 components, children's soft animal toys with vinyl components, vinyl keychains, and vinyl  
5 magnets, purchasers and users in the State of California were being exposed to the LISTED  
6 CHEMICAL resulting from the reasonably foreseeable uses of children's bath books, children's  
7 costumes with vinyl components, children's soft animal toys with vinyl components, vinyl  
8 keychains, and vinyl magnets, without the individual purchasers and users first having been  
9 provided with a "clear and reasonable warning" regarding such toxic exposures ("60-Day Notice  
10 of Violation")

11           31.     On June 30, 2009, a sixty-day notice of violation, together with the requisite  
12 certificate of merit, was provided to RUBIE'S COSTUME, TARGET and various public  
13 enforcement agencies stating that as a result of DEFENDANTS' sales of children's costumes  
14 with vinyl components and vinyl balls, purchasers and users in the State of California were being  
15 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of  
16 children's costumes with vinyl components, without the individual purchasers and users first  
17 having been provided with a "clear and reasonable warning" regarding such toxic exposures  
18 ("60-Day Notice of Violation")

19           32.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
20 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
21 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
22 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
23 DEFENDANTS' receipt of plaintiff's 60-Day Notice of Violation. Plaintiff further alleges and  
24 believes that such violations will continue to occur into the future.

25           33.     After receipt of the claims asserted in the 60-Day Notice of Violation, the  
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
27 cause of action against DEFENDANTS under Proposition 65.  
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1           34.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
3 limits.

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

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

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

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

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

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

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

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

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

9 44. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
10 hereinafter.

11 **PRAYER FOR RELIEF**

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

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


16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
18 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
19 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to the  
20 LISTED CHEMICAL;

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

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

23  
24 Dated: October 16, 2009

Respectfully Submitted,  
HIRST & CHANLER LLP

25 By:   
26 David Lavine  
27 Attorneys for Plaintiff  
28 ANTHONY E. HELD, Ph.D., P.E.