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SAN FRANCISCO COUNTY  
SUPERIOR COURT

2009 MAY 26 AM 1:58

CASE MANAGEMENT CONFERENCE SET

BY: TEAS BUCK

OCT 23 2009 - 9:00 AM

DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 GANZ INC.; and DOES 1-150, inclusive,

16 Defendants.

Case No. **C6C-09-488689**

**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 toys with vinyl components 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 children's toys with vinyl components that defendants manufacture, distribute and/or  
9 offer for sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on children's  
11 toys with vinyl components 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 (c); Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be collectively referred to as the  
24 "LISTED CHEMICAL."

25 7. Defendants manufacture, distribute, and/or sell children's toys with vinyl  
26 components containing excessive levels of the LISTED CHEMICAL including, but not limited  
27 to, the *Rodeo Gang Cow, H10410 (#6 61371 07665 2)*. All such children's toys with vinyl  
28

1 components 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 GANZ INC. (“GANZ”) is a person doing business within the meaning  
19 of California Health & Safety Code § 25249.11.

20 13. Defendant GANZ 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 DEFENDANTS' receipt of plaintiff's sixty-day notices 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 intended that such exposures to the LISTED CHEMICAL from  
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
23 accidental participation in the manufacture, distribution and/or offer for sale or use of  
24 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 are liable for a  
7 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
8 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 as set forth  
13 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 in the amount of \$2,500 per day for each violation  
18 alleged herein;

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

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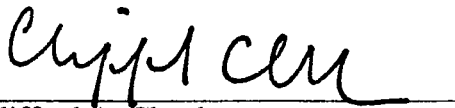
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3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

HIRST & CHANLER LLP

Dated: May 26, 2009

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.