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ENDORSED FILED  
SUPERIOR COURT  
COUNTY OF SAN FRANCISCO

AUG 24 2009

GORDON PARK-LI, CLERK  
BY: PARAM NATT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 HMS HOST CORPORATION; HMS HOST,  
18 U.S.A., INC.; and DOES 1-150, inclusive,

19 Defendants.

Case No. GGC-09-491784

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**CARE MANAGEMENT CONSULTATION SET**

JAN 22 2010 9:00 AM

**DEPARTMENT 212**

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 key chains 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 key chains with vinyl components that defendants manufacture, distribute and/or offer for  
9 sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on key  
11 chains 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 key chains with vinyl components  
26 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the  
27 *Keychain, Black Croc with Sun (#6 53034 19250 2)*. All such key chains with vinyl components  
28 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."





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

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

11 **FIRST CAUSE OF ACTION**

12 **(Violation of Proposition 65 - Against All Defendants)**

13 27. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
14 Paragraphs 1 through 26, inclusive.

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

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

23 30. On April 30, 2009, a sixty-day notice of violation, together with the requisite  
24 certificate of merit, was provided to HMS, HMS HOST and various public enforcement agencies  
25 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in  
26 the State of California were being exposed to di(2-ethylhexyl)phthalate resulting from the  
27 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
28 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

1           31.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
3 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
4 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
5 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and  
6 believes that such violations will continue to occur into the future.

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

10          33.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
11 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
12 limits.

13          34.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
14 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
15 LISTED CHEMICAL.

16          35.     The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
17 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
18 during the reasonably foreseeable use of the PRODUCTS.

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

22          37.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
23 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
24 and/or ingestion.

25          38.     DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
27 accidental participation in the manufacture, distribution and/or offer for sale or use of  
28 PRODUCTS to individuals in the State of California.



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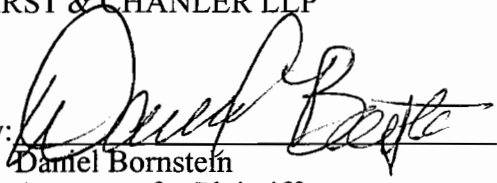
3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

HIRST & CHANLER LLP

Dated: August 19, 2009

By:



Daniel Bornstein  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.