

1 Clifford A. Chanler, State Bar No. 135534
2 Daniel Bornstein, State Bar No. 181711
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

FILED

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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 SHALOM INTERNATIONAL CORP.; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 094909

**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 vinyl bags that appeal to children 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 and/or on
8 certain pre-walk shoes that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and/or on certain
11 pre-walk shoes that defendants manufacture, distribute, and/or offer for sale to consumers
12 throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code Section 25249.6 *et seq.* (Proposition 65), “No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable 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.
22 (*27 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 pre-walk shoes containing
26 excessive levels of the LISTED CHEMICAL including, but not limited to, *So Dorable*,
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1 *Item # 556159L (#0 27467 05615 9)*. All such pre-walk shoes containing the LISTED
2 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 Section 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 Section
18 25249.7.

19 12. Defendant SHALOM INTERNATIONAL CORP. ("SHALOM") is a person
20 doing business within the meaning of California Health & Safety Code Section 25249.11.

21 13. Defendant SHALOM manufactures, distributes, and/or offers the PRODUCTS for
22 sale or use in the State of California or implies by its conduct that it manufactures, distributes,
23 and/or offers the PRODUCTS for sale or use in the State of California.

24 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
25 persons doing business within the meaning of California Health & Safety Code Section
26 25249.11.

1 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
3 engage in the process of research, testing, designing, assembling, fabricating and/or
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

5 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
6 doing business within the meaning of California Health & Safety Code Section 25249.11.

7 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
8 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
9 the State of California.

10 18. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
11 business within the meaning of California Health & Safety Code Section 25249.11.

12 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 21. SHALOM, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
21 to hereinafter as "DEFENDANTS."

22 **VENUE AND JURISDICTION**

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

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

5 24. 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 availment 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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
14 Paragraphs 1 through 24, inclusive.

15 26. 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 Section 25249.5, *et*
17 *seq.* (Proposition 65) that they must be informed "about exposures to chemicals that cause
18 cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

19 27. 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 28. On June 30, 2009, a sixty-day notice of violation, together with the requisite
24 certificate of merit, was provided to SHALOM and various public enforcement agencies stating
25 that as a result of DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of
26 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
27 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
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1 been provided with a “clear and reasonable warning” regarding such toxic exposures (“60-Day
2 Notice of Violation”).

3 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
5 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or
6 use in violation of California Health & Safety Code Section 25249.6 has continued to occur
7 beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice of Violation. Plaintiff further
8 alleges and believes that such violations will continue to occur into the future.

9 30. After receipt of the claims asserted in the 60-Day Notice of Violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

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

1 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
2 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
3 accidental participation in the manufacture, distribution, and/or offer for sale or use of
4 PRODUCTS to individuals in the State of California.

5 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
6 consumers and/or other individuals in the State of California who were or who could become
7 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
8 reasonably foreseeable use of the PRODUCTS.

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

14 39. As a consequence of the above-described acts, DEFENDANTS are liable for a
15 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
16 Safety Code Section 25249.7(b).

17 40. As a consequence of the above-described acts, California Health & Safety
18 Code Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 41. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
21 hereinafter.

22 **PRAYER FOR RELIEF**

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

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

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


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

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

8 Respectfully Submitted,

9 Dated: September 24, 2009

 HIRST & CHANLER LLP

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

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