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

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

15 Plaintiff,

16 v.

17 WORLDWIDE DREAMS LLC; and DOES 1-
18 150, inclusive,

19 Defendants.

20 Case No. RG 10553299

21 **COMPLAINT FOR CIVIL PENALTIES
22 AND INJUNCTIVE RELIEF**

23 *(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 cosmetic bags 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 cosmetic bags 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 on cosmetic
11 bags that defendants manufacture, distribute, and/or offer for sale to consumers throughout the
12 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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to 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 referred to as the "LISTED
24 CHEMICAL."

25 7. Defendants manufacture, distribute, and/or sell cosmetic bags containing
26 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Studio Cosmetic*
27 *Bag, Style #P97063LG (#0 51059 59308 1)*. All such cosmetic bags containing the LISTED
28 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

PARTIES

11. Plaintiff ANTHONY E. HELD, Ph.D., P.E., is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

12. Defendant WORLDWIDE DREAMS LLC (“WWD”) is a person doing business within the meaning of California Health & Safety Code § 25249.11.

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

14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons doing business within the meaning of California Health & Safety Code § 25249.11.

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

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

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

4 18. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each persons doing
 5 business within the meaning of California Health & Safety Code § 25249.11.

6 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
 7 State of California.

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

13 21. WWD, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
 14 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter
 15 as “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

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

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

26 24. The California Superior Court has jurisdiction over DEFENDANTS based on
 27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
 28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful avilment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

8 26. The citizens of the State of California have expressly stated in Proposition 65 that
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

11 27. Proposition 65 states, "No person in the course of doing business shall knowingly
12 and intentionally expose any individual to a chemical known to the state to cause cancer or
13 reproductive toxicity without first giving clear and reasonable warning to such individual...."
14 (*Id.*)

15 28. On March 19, 2010, a sixty-day notice of violation, together with the requisite
16 certificate of merit, was provided to WWD and various public enforcement agencies stating that
17 as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of
18 California were being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably
19 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
20 been provided with a "clear and reasonable warning" regarding such toxic exposures.

21 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
22 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
23 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
24 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
25 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
26 believes that such violations will continue to occur into the future.

1 30. After receipt of the claims asserted in the sixty-day notice of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

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

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

23 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
26 reasonably foreseeable use of the PRODUCTS.

27 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
2 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
3 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

10 **PRAYER FOR RELIEF**

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

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

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

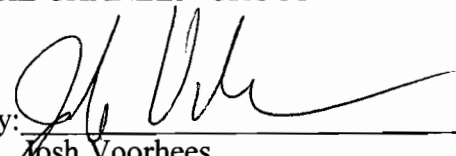
20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

22 Respectfully Submitted,

23 Dated: December 27, 2010

THE CHANLER GROUP

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