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**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUL 22 2010

CLERK OF THE SUPERIOR COURT  
**E. Robinson** Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
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16 ANTHONY E. HELD, PH.D., P.E.,

17 Plaintiff,

18 v.

19 BEST BRANDS CONSUMER PRODUCTS,  
20 INC.

21 Defendant.

Case No. AG10527039

**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 ("DEHP"), a toxic  
5 chemical found in children's backpacks sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failures to  
7 warn California citizens about their exposure to DEHP, present in or on certain children's  
8 backpacks that defendant manufactures, distributes, and/or offers for sale to consumers  
9 throughout the State of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known  
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
17 requirement one year later and was therefore subject to the "clear and reasonable warning"  
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*  
19 *Health & Safety Code § 25249.8.*)

20 5. DEHP shall be referred to hereinafter as the "LISTED CHEMICAL."

21 6. Defendant manufactures, distributes, and/or sells children's backpacks containing  
22 the LISTED CHEMICAL including, but not limited to, the *Iron Man Card Game Set, Style*  
23 *BU2242 (#0 42887 91721 7).*

24 7. All such children's backpacks containing the LISTED CHEMICAL shall  
25 hereinafter be referred to as the "PRODUCTS."

26 8. Defendant's failures to warn consumers and/or other individuals in the State of  
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendant's  
28 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendant to enjoinder of

1 such conduct as well as civil penalties for each such violation.

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

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

8 **PARTIES**

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

13 12. Defendant BEST BRANDS CONSUMER PRODUCTS, INC. ("Best Brands") is  
14 a person doing business within the meaning of California Health & Safety Code § 25249.11.

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

18 **VENUE AND JURISDICTION**

19 14. Venue is proper in the Alameda 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 Alameda and/or because Best Brands conducted, and continues to conduct, business in this  
23 County with respect to the PRODUCTS.

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

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1 of California Health & Safety Code § 25249.6 has continued to occur beyond its receipt of  
2 plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such  
3 violations will continue to occur into the future.

4 22. After receipt of the claims asserted in the sixty-day notice of violation, the  
5 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
6 cause of action against Best Brands under Proposition 65.

7 23. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
8 California by Best Brands contained the LISTED CHEMICAL above the allowable state limits.

9 24. Best Brands knew or should have known that the PRODUCTS manufactured,  
10 distributed, and/or offered for sale or use by it in California contained the LISTED  
11 CHEMICAL.

12 25. 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, ingestion, and/or  
14 inhalation during the reasonably foreseeable use of the PRODUCTS.

15 26. 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  
17 defined by 27 CCR § 25602(b).

18 27. Best Brands had knowledge that the normal and reasonably foreseeable use of the  
19 PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,  
20 ingestion, and/or inhalation.

21 28. Best Brands intended that such exposures to the LISTED CHEMICAL from the  
22 reasonably foreseeable use of the PRODUCTS would occur by its deliberate, non-accidental  
23 participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to  
24 individuals in the State of California.

25 29. Best Brands 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, ingestion, and/or inhalation  
28 during the reasonably foreseeable use of the PRODUCTS.



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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.

Dated: July 22, 2010

Respectfully Submitted,  
THE CHANLER GROUP  
  
By: \_\_\_\_\_  
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.