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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CLERK OF THE COURT

BY: D. STEFFE
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CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC-10-504573

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

Case No. _____

Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

v.

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

SENSI USA, INC.; SENSI, INC.; and DOES
1-150, inclusive,

Defendants.

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 women’s shoes sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to DEHP, present in or on women’s shoes that
8 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
9 California.

10 3. High levels of DEHP are commonly found in and on the women’s shoes that
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 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 23, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was therefore subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on October 23, 2004. (27 Cal. Code Regs., § 27001
22 (c); Cal. Health & Safety Code § 25249.8.) DEHP shall be referred to hereinafter as the
23 “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute and/or sell women’s shoes containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Sensi Ibiza*,
26 *Black w/Vapor, #5220 (#7 94735 03993 9)*. All such women’s shoes containing the LISTED
27 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

28 7. Defendants’ failures to warn consumers and/or other individuals in the State of

1 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
2 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
3 of such conduct as well as civil penalties for each such violation.

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

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

10 **PARTIES**

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

15 11. Defendant SENSI USA, INC. ("SENSI USA") is a person doing business within
16 the meaning of California Health & Safety Code § 25249.11.

17 12. Defendant SENSI USA manufactures, distributes and/or offers the PRODUCTS
18 for sale or use in the State of California, or implies by its conduct that it manufactures,
19 distributes and/or offers the PRODUCTS for sale or use in the State of California.

20 13. Defendant SENSI, INC. ("SENSI") is a person doing business within the meaning
21 of California Health & Safety Code § 25249.11.

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

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

27 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
28 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

8 19. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
9 business within the meaning of California Health & Safety Code § 25249.11.

10 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 22. SENSI USA, SENSI, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
19 to as “DEFENDANTS.”

20 VENUE AND JURISDICTION

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

26 24. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
28 in all causes except those given by statute to other trial courts.” The statute under which this

1 action is brought does not specify any other basis of subject matter jurisdiction.

2 25. The California Superior Court has jurisdiction over DEFENDANTS based on
3 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
4 association that is a citizen of the State of California, has sufficient minimum contacts in the
5 State of California, or otherwise purposefully avails itself of the California market.
6 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
7 California courts consistent with traditional notions of fair play and substantial justice.

8 **FIRST CAUSE OF ACTION**

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

10 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
11 Paragraphs 1 through 25, inclusive.

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

16 28. Proposition 65 states, "[n]o person in the course of doing business shall
17 knowingly and intentionally expose any individual to a chemical known to the state to cause
18 cancer or reproductive toxicity without first giving clear and reasonable warning to such
19 individual...." (*Ibid.*)

20 29. On or about March 19, 2010, a sixty-day notice of violation, together with the
21 requisite certificate of merit, was provided to SENSI USA, SENSI and various public
22 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,
23 purchasers and users in the State of California were being exposed to DEHP resulting from the
24 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
25 first having been provided with a "clear and reasonable warning" regarding such toxic
26 exposures.

27 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and

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

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

8 32. The PRODUCTS manufactured, distributed and/or offered for sale or use in
9 California by DEFENDANTS contain the LISTED CHEMICAL above the allowable state
10 limits.

11 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
12 distributed and/or offered for sale or use by DEFENDANTS in California contain the LISTED
13 CHEMICAL.

14 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
15 expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
16 reasonably foreseeable use of the PRODUCTS.

17 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
18 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
19 defined by 27 California Code of Regulations ("CCR") section 25602(b).

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

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

27 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
28 consumers and/or other individuals in the State of California who were or who could become

1 exposed to the LISTED CHEMICAL through dermal contact and ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

3 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
4 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
5 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
6 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
7 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

11 41. As a consequence of the above-described acts, California Health & Safety Code
12 § 25249.7(a) further specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

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 the
23 LISTED CHEMICAL;

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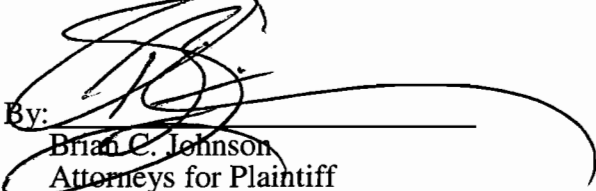
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: October 12, 2010

Respectfully Submitted,
THE CHANLER GROUP

By: 

Brian C. Johnson
Attorneys for Plaintiff
ANTHONY HELD, PH.D., P.E.