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ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2010 OCT 13 PM 1:14

CLERK OF THE COURT

BY: DEPUTY CLERK D. STEFF

CASE MANAGEMENT CONFERENCE SET

MAR 18 2011 9:00 AM

DEPARTMENT 22

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC-10-504572

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

12 Plaintiff,

13 v.

14 SUNNY MARKETING SYSTEMS, INC.; and  
15 DOES 1-150, inclusive,

16 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1  
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 bags/cases for toiletries 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 bags/cases for toiletries  
8 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State  
9 of California.

10          3.     High levels of DEHP are commonly found in and on the bags/cases for toiletries  
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State  
12 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 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 bags/cases for toiletries containing  
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Earth*  
26 *Therapeutics Anti-Stress Body Wrap, Item #4089 (#0 73377 04089 4)*. All such bags/cases for  
27 toiletries containing the LISTED CHEMICAL shall hereinafter be referred to as the  
28 “PRODUCTS.”





1 State of California, or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
3 California 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 23, inclusive.

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

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

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

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

28 29. After receipt of the claims asserted in the sixty-day notice of violation, the

1 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
2 cause of action against DEFENDANTS under Proposition 65.

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

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

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

12 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
13 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
14 defined by 27 California Code of Regulations (“CCR”) section 25602(b).

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

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

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

26 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
28 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by

1 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
2 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

9 **PRAAYER FOR RELIEF**

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

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

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

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

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

21  
22 Dated: October 12, 2010

Respectfully Submitted,  
THE CHANLER GROUP

23  
24  
25 By:   
26 Brian C. Johnson  
Attorneys for Plaintiff  
ANTHONY HELD, PH.D., P.E.