

1 Clifford A. Chanler, State Bar No. 135534  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

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

ENDORSED  
FILED  
San Francisco County Superior Court

NOV 22 2010

CLERK OF THE COURT  
BY: PARRY NATT  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

APR 22 2011 9:00 AM

DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11  
12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 CROSS CANVAS COMPANY,  
16 INCORPORATED; and DOES 1-150,  
17 inclusive,

18 Defendants.

Case No. CGC-10-505564

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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28  
VIA FAX

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 defendants’ continuing failures to  
7 warn California citizens about their exposure to DEHP, present in or on certain children’s  
8 backpacks that defendants manufacture, distribute, and/or offer 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.*) DEHP shall be referred to hereinafter as the “LISTED  
20 CHEMICAL.”

21 5. Defendants manufacture, distribute, and/or sell children’s backpacks containing  
22 the LISTED CHEMICAL including, but not limited to, the *Drivers Select Backpack,*  
23 *C248714900, JG24DUPONT (#7 81317 737048).* All such children’s backpacks containing the  
24 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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





1 in the State of California, or otherwise purposefully avail themselves 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 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 22, inclusive.

8 24. 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 25. 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 26. On June 3, 2010, a sixty-day notice of violation, together with the requisite  
16 certificate of merit, was provided to CROSS CANVAS COMPANY, INCORPORATED and  
17 various public enforcement agencies stating that as a result of the DEFENDANTS' sales of the  
18 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP  
19 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
20 purchasers and users first having been provided with a "clear and reasonable warning"  
21 regarding such toxic exposures.

22 27. 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  
25 in 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

1           28. 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           29. 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           30. 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          31. 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          32. 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  
15 defined by 27 CCR § 25602(b).

16          33. 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          34. 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          35. 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          36. 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 37. 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 38. 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  
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, 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 the  
19 LISTED CHEMICAL;

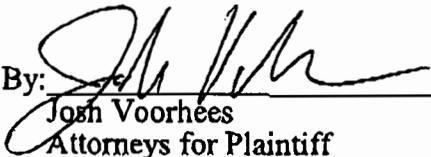
20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

22 Respectfully Submitted,

23 Dated: November 19, 2010

THE CHANLER GROUP

24  
25 By:   
26 John Voorhees  
27 Attorneys for Plaintiff  
28 ANTHONY E. HELD, PH.D., P.E.