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**FILED**

**OCT 05 2010**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Hendryx, Deputy

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E.

16 Plaintiff,

17 v.

18 ATTWOOD CORPORATION; BRUNSWICK  
19 CORPORATION; KOLTOV, INC.; IMPLUS  
20 FOOTCARE, LLC; ONYX CORPORATION;  
21 VSI INTERNATIONAL, LLC; NEOPTX,  
22 LLC; and DOES 1-150, inclusive,

23 Defendants.

24 Case No. CIV 1005294

25 **COMPLAINT FOR CIVIL PENALTIES  
26 AND INJUNCTIVE RELIEF**

27 *(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 eyewear cases, bags/cases for toiletries and handbags 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 eyewear cases,  
8 bags/cases for toiletries and handbags that defendants manufacture, import, distribute and/or  
9 offer for sale to consumers 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. Defendants manufacture, import, distribute and/or sell eyewear cases, bags/cases  
21 for toiletries and handbags containing DEHP as follows:

22 a. Defendants ATTWOOD CORPORATION (“ATTWOOD”), and  
23 BRUNSWICK CORPORATION (“BRUNSWICK”) manufacture, import,  
24 distribute and/or sell bags/cases for toiletries containing DEHP including, but not  
25 limited to, *Attwood Marine First Aid Kit, #11835-7 (#0 22697 11835 6);*

26 b. Defendant IMPLUS FOOTCARE, LLC (“IMPLUS”)  
27 manufactures, imports, distributes and/or sells bags/cases for toiletries containing  
28

1 DEHP including, but not limited to, *Airplus Spa Gift Bag, #0397787 (0 96506*  
2 *20052 5)*;

3 c. Defendant KOLTOV, INC. (“KOLTOV”) manufactures, imports,  
4 distributes and/or sells handbags containing DEHP including, but not limited to,  
5 *Koltov Collection Minibag, #13007482-6 (#0 54069 05769 7)*;

6 d. Defendant ONYX CORPORATION (“ONYX”) manufactures,  
7 imports, distributes and/or sells bags/cases for toiletries containing DEHP  
8 including, but not limited to, *JetSet Aviation Essentials 7 Piece Kit, #70168 (#7*  
9 *17937 70168 8)*; and

10 e. Defendants VSI INTERNATIONAL, LLC (“VSI”), and NEOPTX,  
11 LLC (“NEOPTX”), manufacture, import, distribute and/or sell eyewear cases  
12 containing DEHP including, but not limited to, *Optx 20/20 Fashionreader +1.50,*  
13 *Item #4027500 (#7 08862 70025 9)*.

14 6. All such eyewear cases, bags/cases for toiletries and handbags containing DEHP,  
15 as listed in paragraphs 5 (a) – (e) above, shall hereinafter be collectively referred to as the  
16 “PRODUCTS.” However, as to each individual defendant, “Products” shall only refer to the  
17 specific category/categories identified in paragraphs 5 (a)-(e) in conjunction with that defendant.

18 7. Defendants’ failure to warn adequately, if at all, a variety of California consumers,  
19 businesses, employees, and other persons not covered by California’s Occupational Safety  
20 Health Act, Labor Code § 6300 *et seq.*, in the State of California about their exposure to DEHP  
21 in conjunction with defendants’ distribution, importation, manufacturing and sale of the  
22 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
23 conduct as well as civil penalties for each violation.

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

28 9. Plaintiff also seeks civil penalties against defendants for their violations of

1 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

2 **PARTIES**

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

7 11. Defendants ATTWOOD, BRUNSWICK, IMPLUS, KOLTOV, NEOPTX, ONYX  
8 and VSI are each person's doing business within the meaning of California Health & Safety  
9 Code § 25249.11.

10 12. Defendants ATTWOOD, BRUNSWICK, IMPLUS, KOLTOV, NEOPTX, ONYX  
11 and VSI each manufacture, import, distribute, and/or offer the PRODUCTS for sale or use in the  
12 State of California or imply by their conduct that they manufacture, import, distribute and/or  
13 offers the PRODUCTS for sale or use in the State of California.

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

16 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
17 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
18 engage in the process of research, testing, designing, assembling, fabricating and/or  
19 manufacturing, e.g. by engaging in private labeling one or more of the PRODUCTS for sale or  
20 use in the State of California.

21 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
22 doing business within the meaning of California Health & Safety Code § 25249.11.

23 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
24 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
25 the State of California.

26 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons  
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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1 **FIRST CAUSE OF ACTION**

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

3 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 23, inclusive.

5 25. The citizens of the State of California have expressly stated in Proposition 65 that  
6 they must be informed “about exposures to chemicals that cause cancer, birth defects and other  
7 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

8 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
9 and intentionally expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
11 (*Id.*)

12 27. On or about March 19, 2010, a sixty-day notice of violation, together with the  
13 requisite Certificate of Merit, was provided to KOLTOV and various public enforcement  
14 agencies stating that as a result of KOLTOV’s sales of the PRODUCTS, purchasers and users in  
15 the State of California were being exposed to DEHP resulting from the reasonably foreseeable  
16 uses of the PRODUCTS, without the individual purchasers and users first having been provided  
17 with a “clear and reasonable warning” regarding such toxic exposures.

18 28. On or about June 3, 2010, sixty-day notices of violation, together with the requisite  
19 Certificates of Merit, were provided to IMPLUS, NEOPTX, ONYX, VSI and various public  
20 enforcement agencies stating that as a result of IMPLUS, NEOPTX, ONYX and VSI’s sales of  
21 the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP  
22 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
23 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
24 such toxic exposures.

25 29. On or about July 1, 2010, sixty-day notices of violation, together with the requisite  
26 Certificates of Merit, were provided to ATTWOOD, BRUNSWICK and various public  
27 enforcement agencies stating that as a result of the ATTWOOD and BRUNSWICK’s sales of  
28 the PRODUCTS, purchasers and users in the State of California were being exposed to DEHP

1 resulting from the reasonably foreseeable uses of the PRODUCTS without the individual  
2 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
3 such toxic exposures.

4 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
5 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
6 DEFENDANTS’ manufacture, importation, distribution and/or offering of the PRODUCTS for  
7 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur  
8 beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further  
9 alleges and believes that such violations will continue to occur into the future.

10 31. After receipt of the claims asserted in the March 19, 2010, June 3, 2010, and July  
11 1, 2010 sixty-day notices of violation, the appropriate public enforcement agencies have failed to  
12 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition  
13 65.

14 32. The PRODUCTS manufactured, imported, distributed and/or offered for sale or  
15 use in California by DEFENDANTS contained DEHP above the allowable state limits.

16 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
17 imported, distributed and/or offered for sale or use by DEFENDANTS in California contained  
18 DEHP.

19 34. DEHP was present in or on the PRODUCTS in such a way as to expose  
20 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
21 use of the PRODUCTS.

22 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
23 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
24 27 California Code of Regulations (“CCR”) § 25602(b).

25 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
26 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

27 37. DEFENDANTS intended that such exposures to DEHP from the reasonably  
28 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation

1 in the manufacture, importation, distribution and/or offer for sale or use of PRODUCTS to  
2 individuals in the State of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the State of California who were or who could become  
5 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable use  
6 of the PRODUCTS.

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

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

15 41. As a consequence of the above-described acts, California Health & Safety Code  
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

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

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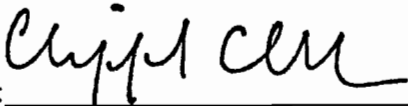
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: October 5, 2010

Respectfully Submitted,

THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.