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ENDORSED  
FILED  
San Francisco County Superior Court

NOV 22 2010

CLERK OF THE COURT  
BY: PARSONATI  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

APR 22 2011 9<sup>00</sup> AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 SMAC, INC.; and DOES 1-150, inclusive,

18 Defendants.

CGC - 10 - 505566

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 footwear 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 footwear that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 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 footwear containing the LISTED  
22 CHEMICAL including, but not limited to, the *Miss Me? Bennie-1, Smoke (#8 46142 02866 9)*.  
23 All such footwear containing the LISTED CHEMICAL shall hereinafter be referred to as the  
24 "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 **FIRST CAUSE OF ACTION**

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

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 22, inclusive.

5 24. 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 25. Proposition 65 states, “No 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 26. On September 1, 2010, a sixty-day notice of violation, together with the requisite  
13 certificate of merit, was provided to SMAC and various public enforcement agencies stating  
14 that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the  
15 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses  
16 of the PRODUCTS, without the individual purchasers and users first having been provided with  
17 a “clear and reasonable warning” regarding such toxic exposures.

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

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

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1           29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
3 limits.

4           30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
5 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
6 LISTED CHEMICAL.

7           31. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
8 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
9 during the reasonably foreseeable use of the PRODUCTS.

10          32. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
11 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
12 defined by 27 CCR § 25602(b).

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

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

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

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

