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ENDORSED
FILED
ALAMEDA COUNTY

FEB - 8 2011

CLERK OF THE SUPERIOR COURT

By E. Robinson Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

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

12 Plaintiff,

13 v.

14 FRANCE DECO TRADING, INC.; and DOES
15 1-150, inclusive,

16 Defendants.
17

Case No. 1011560472

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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”) and di-n-
5 butyl phthalate (“DBP”), toxic phthalate chemicals found in toiletry cases and tote bags sold in
6 California.

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

11 3. High levels of DEHP and DBP are commonly found in and on the toiletry cases
12 and tote bags that defendants manufacture, distribute, and/or offer for sale to consumers
13 throughout the State of California.

14 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
15 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
16 of doing business shall knowingly and intentionally expose any individual to a chemical known
17 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

19 5. On October 24, 2003, California identified and listed DEHP as a chemical known
20 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (27
22 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)

23 6. On December 2, 2005, California identified and listed DBP as a chemical known
24 to cause birth defects and other reproductive harm. DBP became subject to the “clear and
25 reasonable warning” requirements of Proposition 65 one year later on December 2, 2006. (Tit.
26 27 Cal. Code Regs., § 27001 (c); Cal. Health & Safety Code, §§ 25249.8 & 25249.10(b).)
27 DEHP and DBP shall be referred to collectively as the “LISTED CHEMICALS.”
28

1 7. Defendants manufacture, distribute, and/or sell toiletry cases and tote bags
2 containing excessive levels of the DEHP, including, but not limited to, *Murval Mock Crock*
3 *Travel Organizer #821032 CRPG (#8 42012 08301 1)*.

4 8. Defendants manufacture, distribute, and/or sell tote bags containing excessive
5 levels of DBP, including, but not limited to, *Murval Tote Bag, 8 42012 8301 6)*. All such
6 toiletry cases containing DEHP and tote bags containing DBP shall hereinafter collectively be
7 referred to as "PRODUCTS."

8 9. Defendants' failures to warn consumers and/or other individuals in the State of
9 California about their exposure to the LISTED CHEMICALS in conjunction with defendants'
10 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
11 of such conduct as well as civil penalties for each such violation.

12 10. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
13 and permanent injunctive relief to compel defendants to provide purchasers or users of the
14 PRODUCTS with the required warning regarding the health hazards of the LISTED
15 CHEMICALS. (Cal. Health & Safety Code § 25249.7(a).)

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

18 **PARTIES**

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

23 13. Defendant FRANCE DECO TRADING, INC. ("FRANCE DECO") is a person
24 doing business within the meaning of California Health & Safety Code § 25249.11.

25 14. Defendant FRANCE DECO manufactures, distributes, and/or offers the
26 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
27
28

1 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
4 persons doing business within the meaning of California Health & Safety Code § 25249.11.

5 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
6 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
7 engage in the process of research, testing, designing, assembling, fabricating, and/or
8 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

16 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
17 State of California.

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

23 22. FRANCE DECO, MANUFACTURER DEFENDANTS, DISTRIBUTOR
24 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
25 referred to as “DEFENDANTS.”

26 **VENUE AND JURISDICTION**

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

24. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

1 29. On or about September 1, 2010, plaintiff's sixty-day notice of violation, together
2 with the requisite certificate of merit, was provided to FRANCE DECO and various public
3 enforcement agencies stating that, as a result of the DEFENDANTS' sales of toiletry cases,
4 purchasers and users in the State of California were being exposed to DEHP resulting from the
5 reasonably foreseeable uses of the toiletry cases, without the individual purchasers and users
6 first having been provided with a "clear and reasonable warning" regarding such toxic
7 exposures.

8 30. On or about November 23, 2010, plaintiff's supplemental sixty-day notice of
9 violation, together with the requisite certificate of merit, was also provided to FRANCE DECO
10 and various public enforcement agencies which referenced the tote bags containing DBP and
11 stated that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
12 the State of California were being exposed to the LISTED CHEMICALS resulting from the
13 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
14 first having been provided with a "clear and reasonable warning" regarding such toxic
15 exposures.

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

22 32. After receipt of the claims asserted in the sixty-day notices of violation and the
23 supplemental sixty-day notice of violation, the appropriate public enforcement agencies have
24 failed to commence and diligently prosecute a cause of action against DEFENDANTS under
25 Proposition 65.
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1 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICALS above the allowable state
3 limits.

4 34. 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 CHEMICALS.

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

10 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
11 continues to cause, consumer exposures to the LISTED CHEMICALS, as such exposures are
12 defined by 27 California Code of Regulations ("CCR") § 25602(b).

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

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

20 39. 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 CHEMICALS through dermal contact and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

24 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the LISTED CHEMICALS 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
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1 suffer, irreparable harm, for which they have no plain, speedy, or adequate remedy at law.

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

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

8 **PRAYER FOR RELIEF**

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

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

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

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

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

20 Dated: February 8, 2011

21 Respectfully Submitted,
22 THE CHANLER GROUP

23 By: 

24 Brian C. Johnson
25 Attorneys for Plaintiff
26 ANTHONY E. HELD, Ph.D., P.E.