

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 HELD, Ph.D., P.E.

**ENDORSED
FILED
ALAMEDA COUNTY**

FEB - 4 2011

**CLERK OF THE SUPERIOR COURT
E. ROBINSON, Deputy**

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 GRENDENE USA, INC.; and DOES 1-150,
20 inclusive,

21 Defendants.

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 HELD,
3 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 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 24, 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 24, 2004. (27 Cal. Code Regs., § 27001
19 (c); Cal. Health & Safety Code § 25249.8.)

20 5. DEHP shall be referred to hereinafter as the "LISTED CHEMICAL."

21 6. Defendants manufacture, distribute, and/or sell footwear containing excessive
22 levels of the LISTED CHEMICAL including, but not limited to, the *Grendha Jelly Jody*,
23 #35284, #06005 *Smoke* (#637467 489743).

24 7. All such footwear containing the LISTED CHEMICAL shall hereinafter be
25 referred to as the "PRODUCTS."

26 8. Defendants' failures to warn consumers and/or other individuals in the State of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'

1 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
2 of such conduct as well as civil penalties for each such violation.

3 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide purchasers or users of the
5 PRODUCTS with the required warning regarding the health hazards of the LISTED
6 CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)

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

9 **PARTIES**

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

14 12. Defendants GRENDENE USA, INC. ("GRENDENE") is a person in the course
15 of doing business within the meaning of California Health & Safety Code § 25249.11.

16 13. Defendants GRENDENE manufactures, distributes, and/or offers the
17 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
18 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

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

22 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. 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 27. Proposition 65 states, "[n]o person in the course of doing business shall
12 knowingly and intentionally expose any individual to a chemical known to the state to cause
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such
14 individual...." (*Id.*)

15 28. On or about September 1, 2010, a sixty-day notice of violation, together with the
16 requisite certificate of merit, was provided to GRENDENE and various public enforcement
17 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
18 and users in the State of California were being exposed to the LISTED CHEMICAL resulting
19 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
20 users first having been provided with a "clear and reasonable warning" regarding such toxic
21 exposures.

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

1 30. 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 31. 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 32. 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 33. 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 34. 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 California Code of Regulations (“CCR”) section 25602(b).

16 35. 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 36. 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 offering for sale or use of
22 PRODUCTS to individuals in the State of California.

23 37. 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 38. 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 39. 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 40. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) further 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,
17 importing, and/or offering the PRODUCTS for sale or use in California, without providing
18 “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with
19 exposures to the 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 Dated: February __, 2011

23 Respectfully Submitted,
24 THE CHANLER GROUP

25 By: _____
26 Josh Voorhees
27 Attorneys for Plaintiff
28 ANTHONY HELD, Ph.D., P.E.

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 39. 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 40. As a consequence of the above-described acts, California Health & Safety Code
8 § 25249.7(a) further 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,
17 importing, and/or offering the PRODUCTS for sale or use in California, without providing
18 "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
19 exposures to the 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 Dated: February 4, 2011

23 Respectfully Submitted,
THE CHANLER GROUP

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