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FILED

MAR 25 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 KISS NAIL PRODUCTS, INC.; KISS
16 PRODUCTS, INC.; and DOES 1-150,
inclusive,

17 Defendants.

Case No. Civ 1101576

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(*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 cosmetic cases and bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain cosmetic cases and
8 bags that defendants manufacture, import, 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 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 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendants KISS NAIL PRODUCTS, INC. and KISS PRODUCTS, INC.
21 (collectively "KISS" or "Defendants") manufacture, import, distribute, and/or sell cosmetic cases
22 and bags containing DEHP including, but not limited to, *Kiss Professional Pedicure Kit #51048,*
23 *RPK01 (#7 31509 51048 5).*

24 6. All such cosmetic cases and bags containing DEHP, shall hereinafter be
25 collectively referred to as the "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the State of
27 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
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1 *seq.* about their exposure to DEHP in conjunction with Defendants' distribution, importation,
2 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
3 Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

4 8. For Defendants' violation of Proposition 65, plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel Defendants to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
7 *Safety Code § 25249.7(a).*)

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

10 **PARTIES**

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

15 11. KISS NAIL PRODUCTS, INC. is a person doing business within the meaning of
16 California Health & Safety Code § 25249.11.

17 12. KISS NAIL PRODUCTS, INC. manufactures, imports, distributes, and/or offers
18 the PRODUCTS for sale or use in the State of California or implies by its conduct that it
19 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
20 California.

21 13. KISS PRODUCTS, INC. is a person doing business within the meaning of
22 California Health & Safety Code § 25249.11.

23 14. KISS PRODUCTS, INC. manufactures, imports, distributes, and/or offers the
24 PRODUCTS for sale or use in the State of California or implies by its conduct that it
25 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
26 California.

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

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

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

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

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

14 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California and, in some circumstances, may also be manufacturers and/or distributors.

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

21 22. KISS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
22 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter
23 as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

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

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

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that either are citizens of the State of California, have sufficient minimum contacts in
14 the State of California, or otherwise purposefully avail themselves of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

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

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

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

1 29. On December 21, 2010, a 60-Day Notice of Violation, together with the requisite
2 Certificate of Merit (“Notice”), was provided to KISS and various public enforcement agencies
3 stating that as a result of KISS’s manufacture, distribution and/or sale of the PRODUCTS,
4 purchasers and users in the State of California were being exposed to DEHP resulting from the
5 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
6 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

7 30. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
8 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
9 25249.6 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the
10 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
11 continued to occur beyond KISS’s receipt of the Notice.

12 Plaintiff further alleges and believes that such violations will continue to occur into the future.

13 31. After receipt of the claims asserted in the Notice, the appropriate public
14 enforcement agencies have failed to commence and diligently prosecute a cause of action against
15 DEFENDANTS under Proposition 65.

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

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

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

24 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
25 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
26 27 California Code of Regulations (“CCR”) § 25602(b).

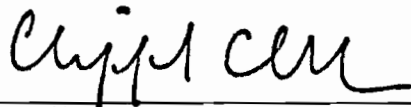
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- 1 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
3 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
4 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;
- 5 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
6 4. That the Court grant such other and further relief as may be just and proper.

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8 Dated: March 22, 2011

Respectfully Submitted,

THE CHANLER GROUP

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