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ENDORSED  
FILED  
ALAMEDA COUNTY

JUN - 8 2011

CLERK OF THE COURT  
By E. Robinson Deputy

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

11 ANTHONY E. HELD, PhD., P.E.,

12 Plaintiff,

13 v.

14 HEWLETT-PACKARD COMPANY; and  
15 DOES 1-150, inclusive,

16 Defendants.

Case No. RG11579604

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  
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 briefcases for notebooks sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
7 warn California citizens about their exposure to DEHP present in or on briefcases for notebooks  
8 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State  
9 of California.

10 3. High levels of DEHP are commonly found in and on the briefcases for notebooks  
11 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State  
12 of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual ..." (Cal. Health & Safety Code, § 25249.6.)

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

23 6. Defendants manufacture, distribute, and/or offer for sale briefcases for notebooks  
24 containing excessive levels of DEHP including, but not limited to, *HP EZ Check Briefcase,*  
25 *VE050AA (#8 84962 19882 7).* All such briefcases for notebooks containing DEHP shall  
26 hereinafter be referred to as "PRODUCTS."

27 7. Defendants' failure to warn consumers and/or other individuals in the State of  
28 California about their exposure to DEHP in conjunction with defendants' sale of the

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

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

7 9. 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 10. 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; he brings this action in the public interest  
13 pursuant to California Health & Safety Code § 25249.7(d).

14 11. Defendant HEWLETT-PACKARD COMPANY ("HP") is a person in the course  
15 of doing business within the meaning of California Health & Safety Code § 25249.11(c).

16 12. Defendant HP manufactures, distributes, and/or offers the PRODUCTS for sale or  
17 use in the State of California, or implies by its conduct that it manufactures, distributes, and/or  
18 offers PRODUCTS for sale or use in the State of California.

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

22 14. 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 PRODUCTS offered for sale or use in the State of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
27 in the course of doing business within the meaning of California Health & Safety Code §  
28 25249.11(c).



1 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
2 State of California, or otherwise purposefully avails itself of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

17 27. On or about March 17, 2011, a sixty-day notice of violation, together with the  
18 requisite certificate of merit, was provided to HP and various public enforcement agencies  
19 stating that, as a result of the DEFENDANTS' sales of PRODUCTS, purchasers and users in the  
20 State of California were being exposed to DEHP resulting from the reasonably foreseeable use  
21 of PRODUCTS, without the individual purchasers and users first having been provided with a  
22 "clear and reasonable warning" regarding such toxic exposures.

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

1           29. 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           30. PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

6           31. DEFENDANTS knew or should have known that PRODUCTS manufactured,  
7 distributed, and/or offered for sale or use in California contained DEHP.

8           32. DEHP was present in or on PRODUCTS in such a way as to expose individuals to  
9 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of  
10 PRODUCTS.

11           33. The normal and reasonably foreseeable use of PRODUCTS has caused, and  
12 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR  
13 § 25602(b).

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

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

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

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

