

FILED

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KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Engstrom, Deputy

1 Clifford A. Chanler, State Bar No. 135534  
Josh Voorhees, State Bar No. 241436  
2 Brian C. Johnson, State Bar No. 235965  
THE CHANLER GROUP  
3 2560 Ninth Street  
Parker Plaza, Suite 214  
4 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
ANTHONY E. HELD, PhD., P.E.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
11

12 ANTHONY E. HELD, PhD., P.E.,

13 Plaintiff,

14 v.

16 PANASONIC CORPORATION OF NORTH  
17 AMERICA; MAX'S WHOLESALE IMPORT  
& EXPORT INC.; and DOES 1-150, inclusive,

18 Defendants.

Case No. CIV 1103671

**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 toiletry cases/bags 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 toiletry cases/bags that  
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
9 California.

10 3. High levels of DEHP are commonly found in and on the toiletry cases/bags that  
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
12 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).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and/or offer for sale toiletry cases/bags  
24 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the  
25 cases/bags offered in connection with the *Shanti/Panasonic Spa Kit (#0 37988 56082 0)*. All  
26 such toiletry cases/bags containing the LISTED CHEMICAL shall hereinafter be referred to as  
27 the “PRODUCTS.”

1 7. Defendants' failure to warn consumers and/or other individuals in the State of  
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'  
3 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoyment  
4 of such conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

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

16 11. Defendant PANASONIC CORPORATION OF NORTH AMERICA  
17 ("PANASONIC") is a person in the course of doing business within the meaning of California  
18 Health & Safety Code § 25249.11.

19 12. Defendant MAX'S WHOLESALE IMPORT AND EXPORT INC. ("MAX'S") is  
20 a person in the course of doing business within the meaning of California Health & Safety Code  
21 § 25249.11.

22 13. Defendant PANASONIC manufactures, distributes, and/or offers the  
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
24 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
25 California.

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

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

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

8           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
9 in the course of doing business within the meaning of California Health & Safety Code §  
10 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 in  
15 the course of doing business within the meaning of California Health & Safety Code §  
16 25249.11.

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

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

24           22. PANASONIC, MAX’S, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
26 referred to as “DEFENDANTS.”  
27  
28

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 continue to occur, in Marin County,  
5 and/or because DEFENDANTS conducted, and continue to conduct, business in this county  
6 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  
9 in all causes except those given by statute to other trial courts.” The statute under which this  
10 action 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 is a citizen of the State of California, has sufficient minimum contacts in the  
14 State of California, or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
16 California 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 the Safe Drinking  
22 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
23 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
24 other reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

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

1           29. On or about March 31, 2011, plaintiff's sixty-day notice of violation, together  
2 with the requisite certificate of merit, was provided to PANASONIC and various public  
3 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,  
4 purchasers and users in the State of California were being exposed to DEHP resulting from the  
5 reasonably foreseeable use 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. On or about May 4, 2011, plaintiff's supplemental sixty-day notice of violation,  
8 together with the requisite certificate of merit, was provided to PANASONIC, MAX'S and  
9 various public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the  
10 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP  
11 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual  
12 purchasers and users first having been provided with a "clear and reasonable warning"  
13 regarding such toxic exposures. Plaintiff's sixty-day notice and supplemental sixty-day notice  
14 shall hereinafter be referred to as the "Notices".

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

21           32. After receipt of the claims asserted in the Notices, the appropriate public  
22 enforcement agencies have failed to commence and diligently prosecute a cause of action  
23 against DEFENDANTS under Proposition 65.

24           33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
25 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the  
26 allowable state limits.

27           34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
28 distributed, and/or offered for sale or use in California contained the LISTED CHEMICAL.

1           35. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
2 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
3 during the reasonably foreseeable use of the PRODUCTS.

4           36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
5 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposure is  
6 defined by Title 27 CCR § 25602(b).

7           37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
8 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
9 and/or ingestion.

10           38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
11 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
12 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
13 sale or use to individuals in the State of California.

14           39. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
15 consumers and/or other individuals in the State of California who were, or who could become,  
16 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
17 reasonably foreseeable use of the PRODUCTS.

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

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

26           42. As a consequence of the above-described acts, California Health & Safety Code  
27 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
28 DEFENDANTS.

1 **PRAYER FOR RELIEF**

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

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

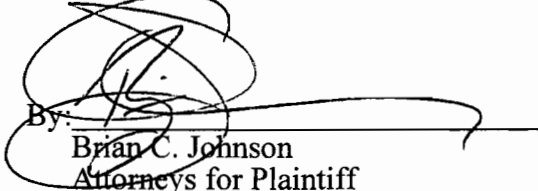
6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
9 warnings” as defined by 27 CCR §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

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

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

13  
14 Dated: July 25, 2011

Respectfully Submitted,  
THE CHANLER GROUP

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16  
17 By:   
18 Brian C. Johnson  
Attorneys for Plaintiff  
ANTHONY E. HELD, PHD., P.E.