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ENDORSED
FILED
ALAMEDA COUNTY

NOV 22 2011

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

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

15 ANTHONY E. HELD, PhD., P.E.,

16 Plaintiff,

17 v.

18 IMEX DISCOVERY RESOURCES, INC.;;
19 and DOES 1-150, inclusive,

20 Defendants.

Case No.

RG11605516

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1
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 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,
25 *Coppertone Sun Essentials, Item #548510 (#0 41100 70440 5)*. All such toiletry cases/bags
26 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers and/or other individuals in the State of
28 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 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 the LISTED
6 CHEMICAL. (Cal. Health & 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 IMEX DISCOVERY RESOURCES, INC. ("IMEX") is a person in the
15 course of doing business within the meaning of California Health & Safety Code § 25249.11(c).

16 12. Defendant IMEX manufactures, distributes, and/or offers the PRODUCTS for
17 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,
18 and/or offers the 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 of the 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 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 31, 2011, a sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to IMEX, and various public enforcement agencies
19 stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
20 the State of California were being exposed to DEHP resulting from the reasonably foreseeable
21 use of the PRODUCTS, without the individual purchasers and users first having been provided
22 with a "clear and reasonable warning" regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
25 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
26 in 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. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the
6 allowable state limits.

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

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

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

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

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

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

26 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold

1 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
2 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

9 **PRAYER FOR RELIEF**

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

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

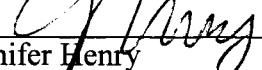
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
17 warnings” as defined by 27 CCR § 25601,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

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

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

21
22 Dated: November 22, 2011

Respectfully Submitted,
THE CHANLER GROUP

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25 By: 
Jennifer Henry
Attorneys for Plaintiff
ANTHONY E. HELD, PHD., P.E.