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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CLERK OF COURT

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

CGC-11-516586

14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 TWO'S COMPANY, INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. _____

**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 toxic chemicals found in consumer products
5 sold in California, including di(2-ethylhexyl)phthalate (“DEHP”) found in cosmetic cases/bags
6 and luggage tags and lead found in luggage tags.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about reproductive harms associated with their exposure to the
9 following chemicals in and/or on the following consumer products that defendants manufacture,
10 import, distribute, and/or offer for sale to consumers throughout the State of California: DEHP
11 present in and/or on certain cosmetic cases/bags and luggage tags and lead present in certain
12 luggage tags.

13 3. High levels of the following chemicals are commonly found in and/or on the
14 following consumer products that defendants manufacture, import, distribute, and/or offer for
15 sale to consumers throughout the State of California: DEHP present in and/or on certain
16 cosmetic cases/bags and luggage tags and lead present in certain luggage tags.

17 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
18 Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
19 doing business shall knowingly and intentionally expose any individual to a chemical known to
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
21 warning to such individual ...” (Health & Saf. Code, § 25249.6.)

22 5. On October 24, 2003, California identified and listed DEHP as a chemical known
23 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
24 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Cal.
25 Code Regs., tit. 27, § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

26 6. On February 27, 1987, California identified and listed lead as a chemical known
27 to cause birth defects and other reproductive harm. Lead became subject to the warning
28 requirement one year later and was therefore subject to the “clear and reasonable warning”

1 requirements of Proposition 65, beginning on February 27, 1988. (Cal. Code Regs., tit. 27,
2 § 27001, subd. (c); Health & Saf. Code, §§ 25249.8 & 25249.10, subd. (b).)

3 7. Defendants manufacture, import, distribute, and/or sell cosmetic cases/bags and
4 luggage tags containing DEHP and lead as follows:

5 a. Defendants manufacture, import, distribute, and/or offer for sale cosmetic
6 cases/bags containing DEHP (“COSMETIC BAG PRODUCTS”) including, but not
7 limited to, the *Mindy Weiss Bridesmaid Cosmetic Bag, #8850 (#0 19218 08850 2)*.

8 b. Defendants manufacture, import, distribute, and/or offer for sale luggage
9 tags containing DEHP and/or lead (“LUGGAGE TAG PRODUCTS”) including, but not
10 limited to, the *Hide & Seek Luggage Tag, #41169-20 (#0 19218 72065 5)*.

11 8. All such COSMETIC BAG PRODUCTS and LUGGAGE TAG PRODUCTS
12 shall hereinafter be referred to collectively as the “PRODUCTS.”

13 9. Defendants’ failure to warn consumers and/or other individuals in the state of
14 California not covered by California’s Occupational Safety Health Act, Labor Code section
15 6300 *et seq.*, about their exposure to DEHP and/or lead and its potential to cause birth defects
16 and other reproductive harm in conjunction with Defendants’ distribution, importation,
17 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
18 Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

19 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
20 and permanent injunctive relief to compel defendants to provide purchasers or users of the
21 PRODUCTS with the required warning regarding the health hazards of DEHP and/or lead.
22 (Health & Safety Code, § 25249.7, subd. (a).)

23 11. Plaintiff also seeks civil penalties against defendants for their violations of
24 Proposition 65, as provided by Health & Safety Code section 25249.7(b).

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PARTIES

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

6 13. Defendant TWO'S COMPANY, INC. ("TCI") is a person in the course of doing
7 business within the meaning of Health & Safety Code section 25249.11.

8 14. Defendant TCI manufactures, distributes, and/or offers the PRODUCTS for sale
9 or use in the state of California, or implies by its conduct that it manufactures, distributes,
10 and/or offers the PRODUCTS for sale or use in the state of California.

11 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
12 persons in the course of doing business within the meaning of Health & Safety Code section
13 25249.11.

14 16. MANUFACTURER DEFENDANTS engage in the process of researching,
15 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
16 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
17 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

18 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
19 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

20 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
21 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
22 in the state of California.

23 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
24 the course of doing business within the meaning of Health & Safety Code section 25249.11.

25 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
26 state of California.

27 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
28 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to

1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. TCI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
5 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
6 “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the San Francisco County Superior Court pursuant to Code of
9 Civil Procedure sections 394, 395, & 395.5, because this Court is a court of competent
10 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to
11 occur, in San Francisco County, and/or because DEFENDANTS conducted, and continue to
12 conduct, business in this County with respect to the PRODUCTS.

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

17 25. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
19 or association that is a citizen of the state of California, has sufficient minimum contacts in the
20 state of California, or otherwise purposefully avails itself of the California market.

21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
22 California courts consistent with traditional notions of fair play and substantial justice.

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1 **FIRST CAUSE OF ACTION**

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

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

5 27. The citizens of the state of California have stated expressly in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986 that they must be informed “about exposures to
7 chemicals that cause cancer, birth defects and other reproductive harm.” (Health & Saf. Code, §
8 25249.6.)

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

13 29. On or about April 8, 2011, a sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to TCI and various public enforcement agencies
15 stating that, as a result of the DEFENDANTS’ sales of the COSMETIC BAG PRODUCTS,
16 purchasers and users in the state of California were exposed to DEHP resulting from the
17 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
18 having received a “clear and reasonable warning” regarding such toxic exposures.

19 30. On or about September 19, 2011, a supplemental sixty-day notice of violation,
20 together with the requisite certificate of merit, was provided to TCI and various public
21 enforcement agencies stating that:

22 a. As a result of the DEFENDANTS’ sales of the COSMETIC BAG
23 PRODUCTS, purchasers and users in the state of California were exposed to DEHP
24 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
25 purchasers and users first having received a “clear and reasonable warning” regarding
26 such toxic exposures.

27 b. As a result of the DEFENDANTS’ sales of the LUGGAGE TAG
28 PRODUCTS, purchasers and users in the state of California were exposed to DEHP

1 and/or lead resulting from the reasonably foreseeable use of the PRODUCTS, without the
2 individual purchasers and users first having received a “clear and reasonable warning”
3 regarding such toxic exposures.

4 31. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
5 the PRODUCTS for sale or use in violation of Health & Safety Code section 25249.6, and
6 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use
7 in violation of Health & Safety Code section 25249.6 has continued to occur beyond
8 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation and supplemental sixty-day
9 notice of violation. Plaintiff further alleges and believes that such violations will continue to
10 occur into the future.

11 32. After receipt of the claims asserted in the sixty-day notice of violation and
12 supplemental sixty-day notice of violation, the appropriate public enforcement agencies have
13 failed to commence and diligently prosecute a cause of action against DEFENDANTS under
14 Proposition 65.

15 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
16 California by DEFENDANTS contained DEHP and/or lead in an amount above the allowable
17 state limits.

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

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

23 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
24 continues to cause, consumer exposures to DEHP and/or lead, as such exposure is defined by
25 California Code of Regulations title 27, section 25602, subdivision (b).

26 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
27 the PRODUCTS would expose individuals to DEHP and/or lead through dermal contact and/or
28 ingestion.

1 38. DEFENDANTS intended that such exposures to DEHP and/or lead from the
2 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
3 participation in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use
4 to individuals in the state of California.

5 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 consumers and/or other individuals in the state of California who were, or who could become,
7 exposed to DEHP and/or lead through dermal contact and/or ingestion during the reasonably
8 foreseeable use of the PRODUCTS.

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

14 41. As a consequence of the above-described acts, DEFENDANTS are liable for a
15 maximum civil penalty of \$2,500 per day for each violation pursuant to Health & Safety Code
16 section 25249.7, subdivision (b).

17 42. As a consequence of the above-described acts, Health & Safety Code
18 section 25249.7, subdivision (a) also specifically authorizes the Court to grant injunctive relief
19 against DEFENDANTS.

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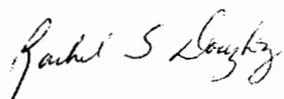
PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health & Safety Code section 25249.7, subdivision (b) assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to Health & Safety Code section 25249.7, subdivision (a) preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by California Code of Regulations title 27, section 25601 as to the harms associated with exposure to DEHP in the COSMETIC CASE PRODUCTS and LUGGAGE TAG PRODUCTS and lead in the LUGGAGE TAG PRODUCTS;
3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
4. That the Court grant such other and further relief as may be just and proper.

Dated: December 13, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 

Rachel S. Doughty
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.