

FILED

SEP 30 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deput

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 **THE CHANLER GROUP**
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

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

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

12 Plaintiff,

13 v.

14 J & D BRUSH CO., INC.; and DOES 1-150,
inclusive,

15 Defendants.
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Case No. CIV 1104852

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD, PH.D., P.E., in the public interest of the citizens of the State of California, to enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in toiletry cases/bags sold in California.

2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn California citizens about their exposure to DEHP, present in or on certain toiletry cases/bags that defendant manufactures, imports, distributes, and/or offer for sale to consumers throughout the State of California.

3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

4. On October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was, therefore, subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal. Health & Safety Code § 25249.8.*)

5. Defendant J & D BRUSH CO., INC. (“J & D” or “Defendant”) manufactures, imports, distributes, and/or sells toiletry cases/bags containing DEHP including, but not limited to, *Pro Results 10 Piece Bone Comb Kit, Model #W10C (#7 36658 91030 8).*

6. All such toiletry cases/bags containing DEHP, shall hereinafter be collectively referred to as the “PRODUCTS.”

7. Defendant’s failure to warn consumers and/or other individuals in the State of California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* about their exposure to DEHP in conjunction with Defendant’s distribution, importation,

1 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects
2 Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For Defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel Defendant 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 Defendant for its violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

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

14 11. J & D is a person doing business within the meaning of California Health & Safety
15 Code § 25249.11.

16 12. J & D manufactures, imports, distributes, and/or offers the PRODUCTS for sale or
17 use in the State of California or implies by its conduct that it manufactures, imports, 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 persons
20 doing business within the meaning of California Health & Safety Code § 25249.11.

21 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
22 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
23 engage in the process of research, testing, designing, assembling, fabricating, and/or
24 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
2 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
3 the State of California.

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

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

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

13 20. J & D, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
14 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter
15 as “DEFENDANTS.”

16 VENUE AND JURISDICTION

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

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

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
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1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 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 Proposition 65 that
10 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
11 reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

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

16 27. On April 19, 2011, a 60-Day Notice of Violation, together with the requisite
17 Certificate of Merit (the "Notice"), was provided to J & D and various public enforcement
18 agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or sale of the
19 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
20 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
21 purchasers and users first having been provided with a "clear and reasonable warning" regarding
22 such toxic exposures.

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

3 29. After receipt of the claims asserted in the Notice, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

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

8 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
9 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
10 DEHP.

11 32. DEHP was present in or on the PRODUCTS in such a way as to expose
12 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
13 of the PRODUCTS.

14 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
15 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
16 27 California Code of Regulations ("CCR") § 25602(b).

17 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
18 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

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

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

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- 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: September 29, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.