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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
MARIN COUNTY
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

CASHCO DISTRIBUTORS, INC.;
SEACLIFF BEAUTY PACKAGING &
LABORATORIES; and DOES 1-150,
inclusive,

Defendants.

Case No.: CIV1103668

**FIRST AMENDED 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 PhD., 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 or on 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 certain toiletry cases/bags
8 that 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 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 course
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 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. 27
21 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

22 6. Defendants manufacture, distribute, and/or sell toiletry cases/bags containing
23 excessive levels of DEHP including, but not limited to, those sold in connection with the *Good*
24 *To Go Women’s Travel Kit (#8 93698 00202 5)*. All such toiletry cases/bags containing DEHP
25 shall hereinafter be referred to as the “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the state of
27 California about their exposure to DEHP in conjunction with defendants’ sale of the
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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 for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. Plaintiff ANTHONY E. HELD, PhD., 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 CASHCO DISTRIBUTORS, INC. ("CASHCO") is a person in the
15 course of doing business within the meaning of California Health & Safety Code §§ 25249.6 &
16 25249.11.

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

20 13. Defendant SEACLIFF BEAUTY PACKAGING & LABORATORIES
21 ("SEACLIFF") is a person in the course of doing business within the meaning of California
22 Health & Safety Code §§ 25249.6 & 25249.11.

23 14. Defendant SEACLIFF manufactures, distributes, and/or offers the PRODUCTS
24 for sale or use in the state of California, or implies by its conduct that it manufactures,
25 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

26 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are persons in
27 the course of doing business within the meaning of California Health & Safety Code §§ 25249.6
28 & 25249.11.

1 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 county with respect to the PRODUCTS.

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

7 25. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that either is a citizen of the state of California, has sufficient minimum contacts in
10 the state of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
12 courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

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

17 27. The citizens of the State of California have expressly stated in Proposition 65 that
18 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
19 reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

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

24 29. On or about May 4, 2011, plaintiff served a sixty-day notice of violation, together
25 with the requisite certificate of merit, on CASHCO and various public enforcement agencies
26 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the
27 state of California were being exposed to DEHP resulting from the reasonably foreseeable use of
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1 the PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures.

3 30. On or about September 1, 2011, plaintiff served a supplemental sixty-day notice
4 of violation, together with the requisite certificate of merit, on CASHCO, SEACLIFF, and
5 various public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
6 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
7 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning” regarding
9 such toxic exposures.

10 31. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
11 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
12 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in
13 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
14 DEFENDANTS’ receipt of plaintiff’s sixty-day notice and supplemental sixty-day notice of
15 violation. Plaintiff further alleges and believes that such violations will continue to occur into
16 the future.

17 32. After receipt of the claims asserted in the sixty-day notices of violation, the
18 appropriate public enforcement agencies have failed to commence and diligently prosecute a
19 cause of action against DEFENDANTS under Proposition 65.

20 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
21 California by DEFENDANTS contained DEHP in an amount above the level at which a warning
22 is required by Proposition 65.

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

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

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1 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to DEHP, as such exposure is defined by Tit. 27 Cal.
3 Code Regs. § 25602(b).

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

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

10 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
11 consumers and/or other individuals in the state of California who were or who could become
12 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable use
13 of the PRODUCTS.

14 40. Contrary to the express policy and statutory prohibition contained in Proposition
15 65, as enacted directly by California voters, individuals exposed to DEHP through dermal
16 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
17 by DEFENDANTS without a “clear and reasonable warning” have suffered, and continue to
18 suffer, irreparable harm, for which they have no plain, speedy, or adequate remedy at law.

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

22 42. As a consequence of the above-described acts, California Health & Safety Code
23 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
24 DEFENDANTS.

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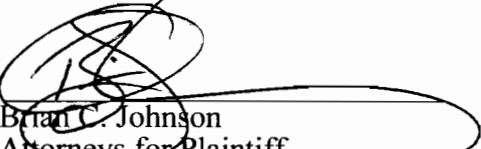
1 **PRAYER FOR RELIEF**

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, and/or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” as defined by Tit. 27 Cal. Code Regs. § 25601, as to the harms associated
10 with exposure DEHP;
- 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.

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14 Dated: November 7, 2011

Respectfully Submitted,
THE CHANLER GROUP

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