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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 09 2012

CLERK OF THE SUPERIOR COURT

Anita Dhir

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

ANTHONY E. HELD, PhD., P.E.,  
Plaintiff,  
v.  
L.C. INDUSTRIES, INC.; and DOES 1-150,  
inclusive,  
Defendants.

Case No. **RG12616508**  
**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  
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 *Lewis*  
25 *N Clark Gear Up And Go Pill Organizer Pouches, #700R (#0 29275 00051 5)*. All such toiletry  
26 cases/bags containing the LISTED CHEMICAL shall hereinafter be referred to as the  
27 “PRODUCTS.”





1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 23, inclusive.

13 25. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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

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

27 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and

1 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
2 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
3 DEFENDANTS' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
4 believes that such violations will continue to occur into the future.

5 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
6 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
7 cause of action against DEFENDANTS under Proposition 65.

8 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
9 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the  
10 allowable state limits.

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

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

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

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

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

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
27 consumers and/or other individuals in the State of California who were, or who could become,  
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1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
2 reasonably foreseeable use of the PRODUCTS.

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

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

11 39. As a consequence of the above-described acts, California Health & Safety Code  
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

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

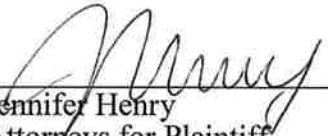
24 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

25 4. That the Court grant such other and further relief as may be just and proper.  
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Dated: February 7, 2012

Respectfully Submitted,  
THE CHANLER GROUP

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