

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PhD., P.E.

ENDORSED
FILED
San Francisco County Superior Court

SEP - 9 2011

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

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

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

16 Plaintiff,

17 v.

18 IDEA NUOVA INC. and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. GGC-11-514063

**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 di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in tote 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 tote bags that defendants
8 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

9 3. High levels of DEHP are commonly found in and on the tote bags that defendants
10 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

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

16 5. On October 24, 2003, California identified and listed DEHP as a chemical known
17 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
18 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.
19 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
20 25249.10(b).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

21 6. Defendants manufacture, distribute, and/or offer for sale tote bags containing
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Cannon*
23 *Ultrasuede Throw ’N Tote With Sherpa, #07101014580 (#7 84857 42968 8)*. All such tote bags
24 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and/or other individuals in the state of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
27 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoyment
28 of such conduct as well as civil penalties for each such violation.

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 § 25249.5 *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 May 11, 2011, plaintiff's sixty-day notice of violation, together with
18 the requisite certificate of merit, was provided to IDEA NUOVA and various public
19 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,
20 purchasers and users in the state of California were being exposed to DEHP resulting from the
21 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
22 having been provided 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 Health & Safety Code § 25249.6, and
25 DEFENDANTS' violations have continued to occur beyond their receipt of plaintiff's sixty-day
26 notice. Plaintiff further alleges and believes that such violations will continue to occur into the
27 future.

1 29. After receiving the claims asserted in the sixty-day notice, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action
3 against DEFENDANTS under Proposition 65.

4 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contain the LISTED CHEMICAL in an amount that is above the
6 allowable state limit, such that they require a “clear and reasonable warning.”

7 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or offered for sale or use in California contain 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 27 CCR § 25602(b).

15 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS exposes 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 during the reasonably foreseeable use of the PRODUCTS.

25 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
27 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
28 by DEFENDANTS without a “clear and reasonable warning” have suffered, and continue to

1 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

8 **PRAYER FOR RELIEF**

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

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

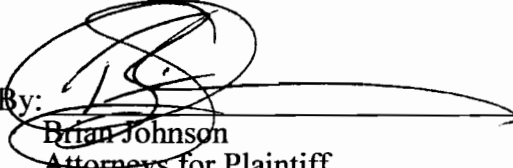
13 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
16 warnings” as defined by 27 CCR § 25601,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

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

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

20
21 Dated: September 8, 2011

22 Respectfully Submitted,
23 THE CHANLER GROUP

24 By: 
25 Brian Johnson
26 Attorneys for Plaintiff
27 ANTHONY E. HELD, PHD., P.E.
28