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FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2011 AUG 18 PM 4:15

CLERK OF THE COURT

BY: _____
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D. STEPPE

1 Christopher M. Martin, State Bar No. 186021
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 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

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

12 Plaintiff,

13 v.

15 OXFORD INDUSTRIES, INC.; TOMMY
16 BAHAMA GROUP, INC.; and DOES 1-150,
inclusive,

17 Defendants.

Case No. **CGC-11-513491**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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 toiletry cases/bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP
8 present in or on certain toiletry cases/bags that defendants manufacture, import, distribute,
9 and/or offer for sale to consumers throughout the State of 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).)

23 6. Defendants manufacture, distribute, and/or offer for sale toiletry cases/bags
24 containing excessive levels of DEHP including, but not limited to, *Tommy Bahama Traveler's*
25 *Collection Amenity Set, #10-845 (#039794668608)*. All such toiletry cases/bags containing
26 DEHP shall hereinafter be referred to as the "PRODUCTS."

27 7. Defendants' failure to warn consumers and/or other individuals in the State of
28 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*

1 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive
2 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of the
3 PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
4 conduct as well as civil penalties for each such violation.

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
6 and permanent injunctive relief to compel defendants to provide purchasers or users of the
7 PRODUCTS with the required warning regarding the health hazards of DEHP. (Cal. Health &
8 Safety Code § 25249.7(a).)

9 9. Plaintiff also seeks civil penalties against defendants for their violations of
10 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

12 10. Plaintiff, ANTHONY E. HELD, Ph.D., P.E., is a citizen of the State of California
13 who is dedicated to protecting the health of California citizens through the elimination or
14 reduction of toxic exposures from consumer products; he brings this action in the public interest
15 pursuant to California Health & Safety Code § 25249.7(d).

16 11. Defendant OXFORD INDUSTRIES, INC. ("OXFORD") is a person in the course
17 of doing business within the meaning of California Health & Safety Code § 25249.11.

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

21 13. Defendant TOMMY BAHAMA GROUP, INC. ("TOMMY BAHAMA") is a
22 person in the course of doing business within the meaning of California Health & Safety Code §
23 25249.11.

24 14. Defendant TOMMY BAHAMA manufactures, distributes, and/or offers the
25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
26 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
27 California.

1 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
2 persons in the course of doing business within the meaning of California Health & Safety Code
3 § 25249.11.

4 16. MANUFACTURER DEFENDANTS engage in the process of researching,
5 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
6 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
7 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

8 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
9 in the course of doing business within the meaning of California Health & Safety Code §
10 25249.11.

11 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the State of California.

14 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
15 the course of doing business within the meaning of California Health & Safety Code §
16 25249.11.

17 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

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

24 22. OXFORD, TOMMY BAHAMA, MANUFACTURER DEFENDANTS,
25 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
26 collectively be referred to as “DEFENDANTS.”
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1 VENUE AND JURISDICTION

2 23. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
3 Civil Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continue to occur, in the
5 County of San Francisco, and/or because DEFENDANTS conducted, and continue to conduct,
6 business in this County with respect to the PRODUCTS.

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

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

17 FIRST CAUSE OF ACTION

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

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

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

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

1 29. On or about May 11, 2011, a sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to OXFORD, TOMMY BAHAMA, and various
3 public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the
4 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
5 resulting from the reasonably foreseeable use of the PRODUCTS without the individual
6 purchasers and users first having been provided with a "clear and reasonable warning"
7 regarding such toxic exposures.

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

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

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

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

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

24 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
25 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
26 § 25602(b).


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

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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: August 18, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.