

COL

1 Laurence D. Haveson, State Bar No. 152631
2 Laralei S. Paras, State Bar No. 203319
3 THE CHANLER GROUP
4 81 Throckmorton Avenue, Suite 203
5 Mill Valley, CA 94941
6 Telephone: (415) 388-1128
7 Facsimile: (415) 388-1135

8 Attorneys for Plaintiff
9 ANTHONY E. HELD, Ph.D., P.E.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 BELL AUTOMOTIVE PRODUCTS, INC.;
17 and DOES 1-150, inclusive,

18 Defendants.

Case No.

civ 1106026

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

FILED

DEC 12 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

FILE

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, ANTHONY HELD,
3 in the public interest of the citizens of the state of California, to enforce the People's right to be
4 informed of the presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in pouch
5 organizers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 California citizens about their exposure to DEHP present in or on pouch organizers that
8 defendants manufacture, import, distribute, and/or offer for sale to consumers throughout the state
9 of California.

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

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

20 5. Defendants manufacture, import, distribute, and/or sell pouch organizers containing
21 the LISTED CHEMICAL including, but not limited to, the *Bell Glove Box Envelope, #33207-A*
22 *(#0 76027 33207 3)*. All such pouch organizers containing the LISTED CHEMICAL shall
23 hereinafter be referred to as the "PRODUCTS."

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

1 **FIRST CAUSE OF ACTION**

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

3 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

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

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

13 26. On or about June 29, 2011, a sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to BELL and various public enforcement agencies
15 stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
16 the state of California were being exposed to the LISTED CHEMICAL resulting from the
17 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
18 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

19 27. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
20 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
21 § 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for
22 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur
23 beyond DEFENDANTS’ receipt of Plaintiff’s sixty-day notice of violation. Plaintiff further
24 alleges and believes that such violations will continue to occur into the future.

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

1 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
3 limits.

4 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 imported, distributed, and/or offered for sale or use by DEFENDANT in California contained the
6 LISTED CHEMICAL.

7 31. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
8 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
9 the reasonably foreseeable use of the PRODUCTS.

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

13 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
15 and/or ingestion.

16 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
17 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
18 participation in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
19 individuals in the state of California.

20 35. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and/or other individuals in the state of California who were or who could become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable use of the PRODUCTS.

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

