

FILED

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

ANTHONY E. HELD, Ph.D., P.E., and
JOHN MOORE,

Plaintiffs,

v.

ALTICOR, INC.; BALLET JEWELS, LLC;
J.C. PENNEY CORPORATION, INC;
GURWITCH PRODUCTS, L.L.C.; LEISURE
ARTS, INC.; MARC FISHER LLC;
MICHAELS STORES, INC; THE WALT
DISNEY COMPANY; TOMMY BAHAMA
GROUP, INC.; WESTERN DIGITAL
CORPORATION; WILLIAMS-SONOMA,
INC; and DOES 1-150, inclusive,

Defendants.

Case No. CIV 1105882

**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 plaintiffs ANTHONY E.
3 HELD, Ph.D., P.E. and JOHN MOORE (collectively “plaintiffs”), in the public interest of the
4 citizens of the state of California, to enforce the People’s right to be informed of the presence of
5 di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”), phthalate chemicals
6 found in consumer products sold in California.

7 2. By this Complaint, plaintiffs seek to remedy defendants’ continuing failures to
8 warn California citizens about their exposure to DEHP, present in or on certain bracelets, belts,
9 chairs with vinyl seats, coverings for books/journals, coverings for books/albums, luggage tags,
10 travel cases, toiletry cases/bags, keychains, cases with zipper pulls and cosmetic bags/cases, and
11 exposure to DBP, present in or on certain footwear, that defendants manufacture, import,
12 distribute and/or offer for sale to consumers throughout the State of California.

13 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No 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 4. On October 23, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*)

23 5. On December 2, 2005, California identified and listed DBP as a chemical known
24 to cause birth defects and other reproductive harm. DBP became subject to the warning
25 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
26 requirements of Proposition 65, beginning on December 2, 2006. (*27 CCR § 27001 (c); Cal.*
27 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

1 6. Defendants manufacture, import, distribute, and/or sell bracelets, belts, chairs with
2 vinyl seats, coverings for books/journals, coverings for books/albums, luggage tags, travel cases,
3 toiletry cases/bags, keychains, cases with zipper pulls and cosmetic bags/cases, containing
4 DEHP, and footwear containing DBP, as follows:

5 a. Defendant ALTICOR INC. manufactures, imports, distributes,
6 and/or sells travel cases containing DEHP including, but not limited to *Personal*
7 *Accents Brittany Jewelry Travel Case, Item #748371.*

8 b. Defendant BALLEET JEWELS, LLC manufactures, imports,
9 distributes, and/or sells bracelets containing DEHP including, but not limited to,
10 *Mudd Bracelet, #111499MIC001 (#7 19267 34442 9);*

11 c. Defendant J.C. PENNEY CORPORATION, INC. manufactures,
12 imports, distributes, and/or sells belts containing the DEHP including, but not
13 limited to, *Worthington Modern Fit Ankle Pants with Belt, #816-2703 0232;*

14 d. Defendant GURWITCH PRODUCTS, L.L.C. manufactures,
15 imports, distributes, and/or sells cosmetic bags/cases containing DEHP including,
16 but not limited to, *Laura Mercier Eyelash Curler (#7 36150 07965 7);*

17 e. Defendant LEISURE ARTS, INC. manufactures, imports,
18 distributes, and/or sells coverings for journals containing DEHP including, but not
19 limited to, *Knit Along with Debbie Macomber The Knitter's Complete Journal,*
20 *#75165 (#0 28906 75165 9);*

21 f. Defendant MARC FISHER LLC. manufactures, imports,
22 distributes, and/or sells footwear containing DBP including, but not limited to,
23 *Guess Sandals, GWECLIPSIS, (#8 84427 97550 5) and Guess Sandals,*
24 *WGFUNKEE2, (#8 86113 44648 1);*

25 g. Defendant MICHAELS STORES manufactures, imports,
26 distributes, and/or sells coverings for books/albums containing DEHP including,
27 but not limited to, *Photo Album, #101005 (#4 00100 59754 5);*
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1 h. Defendant MICHAELS STORES manufactures, imports,
2 distributes, and/or sells luggage tags containing DEHP including, but not limited
3 to, *Luggage Tag – Bombshell* (#8 23398 66456 8);

4 i. Defendant THE WALT DISNEY COMPANY manufactures,
5 imports, distributes, and/or sells keychains containing DEHP including, but not
6 limited to, *ESPN Keychain* (#4 00118 05053 7);

7 j. Defendant TOMMY BAHAMA GROUP, INC. manufactures,
8 imports, distributes, and/or sells toiletry cases/bags containing DEHP including,
9 but not limited to, *Tommy Bahama Traveler’s Collection Amenity Set, #10-845*
10 (*#039794668608*);

11 k. Defendant WESTERN DIGITAL CORPORATION manufactures,
12 imports, distributes, and/or sells cases with zipper pulls containing DEHP
13 including, but not limited to, *WD My Passport Essential SE Portable Hard Drive,*
14 *Model WDBACX7500ABK-NECS, ITEM #546165, (#7 18037 77337 7);* and

15 l. Defendant WILLIAMS-SONOMA, INC. manufactures, imports,
16 distributes, and/or chairs with vinyl seats containing DEHP including, but not
17 limited to, *PB Teen Airgo Armless Chair, #77-2310977 PT, #2310977.*

18 7. All bracelets, belts, chairs with vinyl seats, coverings for books/journals, coverings
19 for books/albums, luggage tags, travel cases, toiletry cases/bags, keychains, cases with zipper
20 pulls and cosmetic bags/cases containing DEHP and footwear containing DBP, as listed above in
21 paragraphs 8(a) through (l) above, shall hereinafter be referred to as the “PRODUCTS.” As to
22 each specific defendant, however, Products shall refer only to those specific products listed for
23 each specific defendant in paragraphs 8(a) through (l) above.

24 8. DEHP and DBP shall collectively hereinafter be referred to as the “Listed
25 Chemicals”. As to each specific defendant, however, Listed Chemicals shall refer only to the
26 specific chemical(s) listed for each specific defendant in paragraphs 8(a) through (l) above.

1 9. Defendants' failure to warn adequately, if at all, a variety of California consumers,
2 businesses, employees, and other persons not covered by California's Occupational Safety
3 Health Act, Labor Code section 6300 *et seq.*, in the State of California about their exposure to
4 the Listed Chemicals in conjunction with defendants' distribution, importation, manufacturing,
5 and sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to
6 enjoinder of such conduct as well as civil penalties for each violation.

7 10. For defendants' violations of Proposition 65, plaintiffs seek preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers or users of the
9 PRODUCTS with the required warning regarding the health hazards of the Listed Chemicals.
10 (*Cal. Health & Safety Code § 25249.7(a).*)

11 11. Plaintiffs also seek civil penalties against defendants for their violations of
12 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

13 **PARTIES**

14 12. Plaintiff JOHN MOORE is a citizen of the state of California who is dedicated to
15 protecting the health of California citizens through the elimination or reduction of toxic
16 exposures from consumer and commercial products, and brings this action in the public interest
17 pursuant to California Health & Safety Code § 25249.7.

18 13. Plaintiff ANTHONY E. HELD, Ph.D., P.E. is a citizen of the state of California
19 who is dedicated to protecting the health of California citizens through the elimination or
20 reduction of toxic exposures from consumer and commercial products, and brings this action in
21 the public interest pursuant to California Health & Safety Code § 25249.7.

22 14. Defendant ALTICOR INC. ("ALTICOR") is a person doing business within the
23 meaning of California Health & Safety Code § 25249.11.

24 15. Defendant ALTICOR manufactures, imports, 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, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
27 California.

1 16. Defendant BALLEET JEWELS, LLC (“BALLEET”) is a person doing business
2 within the meaning of California Health & Safety Code § 25249.11.

3 17. Defendant BALLEET manufactures, imports, distributes, and/or offers the
4 PRODUCTS for sale or use in the state of California or implies by its conduct that it
5 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
6 California.

7 18. Defendant J.C. PENNEY CORPORATION, INC. (“J.C. PENNEY”) is a person
8 doing business within the meaning of California Health & Safety Code § 25249.11.

9 19. Defendant J.C. PENNEY manufactures, imports, distributes, and/or offers the
10 PRODUCTS for sale or use in the state of California or implies by its conduct that it
11 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
12 California.

13 20. Defendant GURWITCH PRODUCTS, L.L.C. (“GURWITCH”) is a person doing
14 business within the meaning of California Health & Safety Code § 25249.11.

15 21. Defendant GURWITCH manufactures, imports, distributes, and/or offers the
16 PRODUCTS for sale or use in the state of California or implies by its conduct that it
17 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
18 California.

19 22. Defendant LEISURE ARTS, INC. (“LEISURE”) is a person doing business within
20 the meaning of California Health & Safety Code § 25249.11.

21 23. Defendant LEISURE manufactures, imports, distributes, and/or offers the
22 PRODUCTS for sale or use in the state of California or implies by its conduct that it
23 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
24 California.

25 24. Defendant MARC FISHER LLC. (“FISHER”) is a person doing business within
26 the meaning of California Health & Safety Code § 25249.11.

1 25. Defendant FISHER manufactures, imports, distributes, and/or offers the
2 PRODUCTS for sale or use in the state of California or implies by its conduct that it
3 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
4 California.

5 26. Defendant MICHAELS STORES (“MICHAELS”) is a person doing business
6 within the meaning of California Health & Safety Code § 25249.11.

7 27. Defendant MICHAELS manufactures, imports, distributes, and/or offers the
8 PRODUCTS for sale or use in the state of California or implies by its conduct that it
9 manufactures, distributes, imports, and/or offers the PRODUCTS for sale or use in the state of
10 California.

11 28. Defendant THE WALT DISNEY COMPANY (“DISNEY”) is a person doing
12 business within the meaning of California Health & Safety Code § 25249.11.

13 29. Defendant DISNEY manufactures, imports, distributes, and/or offers the
14 PRODUCTS for sale or use in the state of California or implies by its conduct that it
15 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
16 California.

17 30. Defendant TOMMY BAHAMA GROUP, INC. (“TOMMY”) is a person doing
18 business within the meaning of California Health & Safety Code § 25249.11.

19 31. Defendant TOMMY manufactures, imports, distributes, and/or offers the
20 PRODUCTS for sale or use in the state of California or implies by its conduct that it
21 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
22 California.

23 32. Defendant WESTERN DIGITAL CORPORATION (“WESTERN”) is a person
24 doing business within the meaning of California Health & Safety Code § 25249.11.

25 33. Defendant WESTERN manufactures, imports, distributes, and/or offers the
26 PRODUCTS for sale or use in the state of California or implies by its conduct that it
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1 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
2 California.

3 34. Defendant WILLIAMS-SONOMA, INC. (“WILLIAMS”) is a person doing
4 business within the meaning of California Health & Safety Code § 25249.11.

5 35. Defendant WILLIAMS manufactures, imports, distributes, and/or offers the
6 PRODUCTS for sale or use in the state of California or implies by its conduct that it
7 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of
8 California.

9 36. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
10 doing business within the meaning of California Health & Safety Code § 25249.11.

11 37. MANUFACTURER DEFENDANTS engage in the process of research, testing,
12 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
13 engage in the process of research, testing, designing, assembling, fabricating and/or
14 manufacturing.

15 38. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
16 doing business within the meaning of California Health & Safety Code § 25249.11.

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

20 40. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 41. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
23 of California and, in some circumstances, may also be manufacturers and/or distributors.

24 42. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiffs, who therefore sue said defendants by their fictitious name pursuant to
26 Code of Civil Procedure § 474. Plaintiffs are informed and believe, and on that basis allege, that
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1 each of the fictitiously named defendants is responsible for the acts and occurrences herein
2 alleged. When ascertained, their true names shall be reflected in an amended complaint.

3 43. ALTICOR, BALLETT, DISNEY, J.C. PENNEY, GURWITCH, LEISURE,
4 FISHER, MICHAELS, TOMMY, WESTERN, WILLIAMS, MANUFACTURER
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
6 appropriate, collectively be referred to hereinafter as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 44. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
9 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because
10 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
11 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
12 County with respect to the PRODUCTS.

13 45. The California Superior Court has jurisdiction over this action pursuant to
14 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in
15 all causes except those given by statute to other trial courts." The statute under which this action
16 is brought does not specify any other basis of subject matter jurisdiction.

17 46. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiffs' information and good faith belief that each defendant is a person, firm, corporation or
19 association that either are citizens of the state of California, have sufficient minimum contacts in
20 the state of California, or otherwise purposefully avail themselves of the California market.
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
22 courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

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

25 47. Plaintiffs reallege and incorporate by reference, as if fully set forth herein,
26 Paragraphs 1 through 46, inclusive.

1 48. The citizens of the state of California have expressly stated in the Safe Drinking
2 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
3 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,
4 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

9 50. On or about April 8, 2011, a sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to GURWITCH and various public enforcement
11 agencies stating that as a result of GURWITCH’s sales of the PRODUCTS, purchasers and users
12 in the state of California were being exposed to DEHP resulting from the reasonably foreseeable
13 uses of the PRODUCTS, without the individual purchasers and users first having been provided
14 with a “clear and reasonable warning” regarding such toxic exposures.

15 51. On or about April 25, 2011, a sixty-day notice of violation, together with the
16 requisite certificate of merit, was provided to J.C. PENNEY, MICHAELS and various public
17 enforcement agencies stating that as a result of their sales of the PRODUCTS, purchasers and
18 users in the state of California were being exposed to DEHP resulting from the reasonably
19 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
20 been provided with a “clear and reasonable warning” regarding such toxic exposures.

21 52. On or about May 11, 2011, sixty-day notices of violation, together with the
22 requisite certificates of merit, were provided to LEISURE, DISNEY, TOMMY, ALTICOR and
23 various public enforcement agencies stating that as a result of their sales of the
24 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
25 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
26 purchasers and users first having been provided with a “clear and reasonable warning” regarding
27 such toxic exposures.

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

7 54. On or about September 19, 2011, a sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to BALLEET and various public enforcement agencies
9 stating that as a result of BALLEET's sales of the PRODUCTS, purchasers and users in the state
10 of California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
11 PRODUCTS, without the individual purchasers and users first having been provided with a
12 "clear and reasonable warning" regarding such toxic exposures.

13 55. On or about September 21, 2011, sixty-day notices of violation, together with the
14 requisite certificates of merit, were provided to WESTERN, WILLIAMS and various public
15 enforcement agencies stating that as a result of the WESTERN and WILLIAM's sales of the
16 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
17 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
18 purchasers and users first having been provided with a "clear and reasonable warning" regarding
19 such toxic exposures.

20 56. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
21 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
22 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
23 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
24 DEFENDANTS' receipt of plaintiffs' sixty-day notice of violation. Plaintiffs further allege and
25 believe that such violations will continue to occur into the future.

26 57. After receipt of the claims asserted in the April 8, 2011, April 25, 2011, May 11,
27 2011, September 19, 2011, and September 21, 2011 sixty-day notices of violation, the
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1 appropriate public enforcement agencies have failed to commence and diligently prosecute a
2 cause of action against DEFENDANTS under Proposition 65.

3 58. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
4 use in California by DEFENDANTS contained the Listed Chemicals above the allowable state
5 limits.

6 59. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 the Listed Chemicals.

9 60. The Listed Chemicals were present in or on the PRODUCTS in such a way as to
10 expose individuals to the Listed Chemicals through dermal contact and/or ingestion during the
11 reasonably foreseeable use of the PRODUCTS.

12 61. The normal and reasonably foreseeable use of the PRODUCTS has caused and
13 continues to cause consumer and workplace exposures to the Listed Chemicals, as such exposure
14 is defined by 27 California Code of Regulations (“CCR”) § 25602(b).

15 62. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
16 the PRODUCTS would expose individuals to the Listed Chemicals through dermal contact
17 and/or ingestion.

18 63. DEFENDANTS intended that such exposures to the Listed Chemicals from the
19 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
20 participation in the manufacture, importation, distribution and/or offer for sale or use of
21 PRODUCTS to individuals in the state of California.

22 64. 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 Chemicals through dermal contact and/or ingestion during the reasonably
25 foreseeable use of the PRODUCTS.

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

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

9 67. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiffs pray 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 alleged
5 herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the
10 Listed Chemicals;

11 3. That the Court grant plaintiffs their reasonable attorneys’ fees and costs of suit;
12 and

13 4. That the Court grant such other and further relief as may be just and proper.
14

15 Dated: December 2, 2011

Respectfully Submitted,

16 THE CHANLER GROUP

17
18
19 By: 

Troy C. Bailey
Attorneys for Plaintiff
JOHN MOORE and
ANTHONY E. HELD, Ph.D., P.E.