

FILED

DEC 30 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
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, PH.D., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION
14

15 ANTHONY E. HELD, PH.D., P.E.,)

Case No. CIV 1106338

16 Plaintiff,)

17 v.)

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

18 PALOS VERDES FOOTWEAR, INC.; and)
19 DOES 1-150, inclusive,)

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

20 Defendants.)
21
22
23
24
25
26
27
28

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., (“Plaintiff”) in the public interest of the citizens of the State of California, to
4 enforce the People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”),
5 a toxic chemical found in footwear sold in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendant’s continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain footwear that
8 defendant manufactures, imports, distributes, sells, and/or offer for sale to consumers throughout
9 the State 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”), “No person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual....” (*Cal. Health & Safety Code § 25249.6.*)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant PALOS VERDES FOOTWEAR, INC. (“Palos” or “Defendant”)
21 manufactures, imports, distributes, sells, and/or offers for sale footwear containing DEHP
22 including, but not limited to, *Sideout Legend Sandals, #3367795.*

23 6. All such footwear containing DEHP, shall hereinafter be collectively referred to as
24 the “PRODUCTS”.

25 7. Defendant’s failure to warn consumers and/or other individuals in the State of
26 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP in conjunction with Defendant’s manufacture, distribution,
28

1 importation, sale, and/or offering of the PRODUCTS for sale is a violation of Proposition 65 and
2 subjects Defendant to enjoinder of such conduct as well as civil penalties for each such
3 violation.

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

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

10 **PARTIES**

11 10. ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California who is
12 dedicated to protecting the health of California citizens through the elimination or reduction of
13 toxic exposures from consumer and commercial products, and brings this action in the public
14 interest pursuant to California Health & Safety Code § 25249.7.

15 11. PALOS VERDES FOOTWEAR, INC. is a person doing business within the
16 meaning of California Health & Safety Code § 25249.11.

17 12. PALOS VERDES FOOTWEAR, INC. manufactures, imports, distributes, sells,
18 and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct
19 that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
20 the State of California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
22 doing business within the meaning of California Health & Safety Code § 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
24 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
25 engage in the process of research, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

27
28

1 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
2 25249.6 has continued to occur beyond Palos' receipt of plaintiff's Notice. Plaintiff further
3 alleges and believes that such violations will continue to occur into the future.

4 29. After receipt of the claims asserted in the Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action against
6 DEFENDANTS under Proposition 65.

7 30. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for sale
8 or use in California by DEFENDANTS contained DEHP above the allowable state limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 imported, distributed, sold, and/or offered for sale or use by DEFENDANTS in California
11 contained DEHP.

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

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
17 27 California Code of Regulations ("CCR") § 25602(b).

18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

20 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
22 in the manufacture, importation, distribution, sale, and/or offer for sale or use of PRODUCTS to
23 individuals in the State of California.

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

28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: December 30, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.