

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 ANTHONY HELD, PH.D.

ENDORSED
FILED
San Francisco County Superior Court
SEP 05 2012
CLERK OF THE COURT
BY: ROSSALY DELAVEGA-NAVARRO
Deputy Clerk

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

ANTHONY HELD, PH.D.,

Plaintiff,

v.

UNIVERSITY ART CENTER, INC. and DOES
1-150,

Defendants.

Case No. CGC-12-523956

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

- 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

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

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code* § 25249.7(a).)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff ANTHONY HELD, PH.D. is a citizen of the State of California who is
7 dedicated to protecting the health of California citizens through the elimination or reduction of
8 toxic exposures from consumer products, and brings this action in the public interest pursuant
9 to California Health & Safety Code Section 25249.7.

10 10. Defendant UNIVERSITY ART CENTER, INC. ("UNIVERSITY ART") is a person
11 doing business within the meaning of California Health & Safety Code Section 25249.11.

12 11. Defendant UNIVERSITY ART manufactures, distributes, and/or offers the
13 PRODUCTS for sale or use in the State of California or implies by its conduct that it
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
15 California.

16 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
17 doing business within the meaning of California Health & Safety Code Section 25249.11.

18 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
19 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
20 engage in the process of research, testing, designing, assembling, fabricating, and/or
21 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

22 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
23 doing business within the meaning of California Health & Safety Code Section 25249.11.

24 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
25 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use
26 in the State of California.

1 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 22, inclusive.

7 24. The citizens of the State of California have expressly stated in the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5, *et*
9 *seq.* (Proposition 65) that they must be informed "about exposures to chemicals that cause
10 cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code* § 25249.6.)

11 25. On September 21, 2011, a sixty-day notice of violation ("60-Day Notice"),
12 together with the requisite Certificate of Merit, was provided to UNIVERSITY ART and
13 various public enforcement agencies stating that as a result of the UNIVERSITY ART's
14 manufacture, distribution and sales of the PRODUCTS, purchasers and users in the State of
15 California are being exposed to DEHP resulting from the reasonably foreseeable uses of the
16 PRODUCTS, without the individual purchasers and users first having been provided with a
17 "clear and reasonable warning" regarding such toxic exposures.

18 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering
19 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section
20 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for
21 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to
22 occur beyond UNIVERSITY ART's receipt of plaintiff's 60-Day Notice. Plaintiff further alleges
23 and believes that such violations will continue to occur into the future.

24 27. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
25 enforcement agencies have failed to commence and diligently prosecute a cause of action
26 against DEFENDANTS under Proposition 65.

1 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS, contain the LISTED CHEMICAL.

3 29. DEFENDANTS knew or should have known that the PRODUCTS contained the
4 LISTED CHEMICAL.

5 30. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
6 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
7 25602(b), through dermal contact and/or ingestion during or as a consequence of the
8 reasonably foreseeable use of the PRODUCTS.

9 31. DEFENDANTS knew or should have known that the reasonably foreseeable use
10 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
11 and/or ingestion.

12 32. DEFENDANTS' participation in the manufacture, distribution and/or offer for
13 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-
14 accidental.

15 33. DEFENDANTS failed to provide a "clear and reasonable warning" to those
16 consumers and/or other individuals in the State of California who were or who could become
17 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

18 34. Contrary to the express policy and statutory prohibition of Proposition 65,
19 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
20 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
21 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable
22 harm, for which harm they have no other plain, speedy or adequate remedy at law.

23 35. As a consequence of the above-described acts, DEFENDANTS are liable for a
24 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
25 California Health & Safety Code Section 25249.7(b).
26
27

