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**FILED**

**DEC 30 2011**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: D. Taylor, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 V.Y.B.E., INC.; CALIFORNIA DREAM CO.,  
19 INC.; and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV 1106339

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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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 footwear 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 footwear that defendants manufacture, import, distribute, and/or offer  
9 for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the footwear that defendants  
11 manufacture, import, 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, import, distribute, and/or offer for sale footwear  
24 containing excessive levels of DEHP including, but not limited to, *Groove Adler Flip Flops,*  
25 *#8588002911.* All such footwear containing DEHP shall hereinafter be referred to as the  
26 “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 V.Y.B.E., INC. ("V.Y.B.E.") is a person in the course of doing  
17 business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant V.Y.B.E. manufactures, imports, distributes, and/or offers the  
19 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
20 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the state of  
21 California.

22 13. Defendant CALIFORNIA DREAM CO., INC. ("CALIFORNIA DREAM CO.")  
23 is a person in the course of doing business within the meaning of California Health & Safety  
24 Code § 25249.11.

25 14. Defendant CALIFORNIA DREAM CO. manufactures, imports, distributes,  
26 and/or offers the PRODUCTS for sale or use in the state of California, or implies by its conduct  
27 that it manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the  
28 state of 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. V.Y.B.E., CALIFORNIA DREAM CO., 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 Marin County Superior Court, pursuant to Code of Civil  
3 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because  
4 one or more instances of wrongful conduct occurred, and continue to occur, in the County of  
5 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
6 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 September 21, 2011, a sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to V.Y.B.E., CALIFORNIA DREAM CO., and  
3 various 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, import, distribution, and/or  
9 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
10 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
11 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
12 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.  
13 Plaintiff further alleges and 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, imported, distributed, and/or offered for sale or  
18 use in California by DEFENDANTS contained DEHP in an amount above the allowable state  
19 limits.

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

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

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

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

3            37. DEFENDANTS intended that such exposures to DEHP from the reasonably  
4 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
5 in the manufacture, import, distribution, and/or offering of the PRODUCTS for sale or use to  
6 individuals in the state of California.

7            38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
8 consumers and/or other individuals in the state of California who were, or who could become,  
9 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
10 use of the PRODUCTS.

11            39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
12 directly by California voters, individuals exposed to DEHP through dermal contact and/or  
13 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by  
14 DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to  
15 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

19            41. As a consequence of the above-described acts, California Health & Safety Code  
20 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
21 DEFENDANTS.

#### 22    **PRAYER FOR RELIEF**

23            Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

24            1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
25 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
26 alleged herein;

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

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 24, 2011

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Christopher M. Martin  
Attorney for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.