

1 Josh Voorhees, State Bar No. 241436
Troy C. Bailey, State Bar No. 277424
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5
6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

(ENDORSED)
FILED
MAY 30 2012
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
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12 ANTHONY E. HELD, PH.D., P.E.,)
13 Plaintiff,)
14 v.)
15 GOLDEN DELTA ENTERPRISES, INC.;)
PLEASER USA, INC.; and DOES 1-150,)
16 inclusive,)
17 Defendants.)

Case No. 1120V225570
**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 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 lead, a toxic chemical found in Halloween
5 costume accessories sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 California citizens about their exposure to lead, present in or on certain Halloween costume
8 accessories that defendants manufacture, import, distribute, sell, and/or offer for sale to
9 consumers and businesses throughout 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 February 7, 1987, California identified and listed lead as a chemical known to
16 cause birth defects and other reproductive harm. Lead 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 February 7, 1988. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8 & 25249.10(b)*).

20 5. Defendants GOLDEN DELTA ENTERPRISES, INC. ("GOLDEN DELTA") and
21 PLEASER USA, INC. ("PLEASER") manufacture, import, distribute, and/or sell Halloween
22 costume accessories containing lead including, but not limited to, *Funtasma Roman, Item*
23 *#ROMAN-12 (#8 85487 31171 5)*. GOLDEN DELTA and PLEASER shall be referred to
24 collectively as "Defendants."

25 6. All such Halloween costume accessories containing lead shall hereinafter be
26 referred to as the "PRODUCTS."

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1 PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures.

3 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale
4 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
5 Code § 25249.6 and DEFENDANTS’ manufacture, importation, distribution, sale and/or
6 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
7 § 25249.6 has continued to occur beyond Defendants’ receipt of the Notice. Plaintiff further
8 alleges and believes that such violations will continue to occur into the future.

9 30. After receipt of the claims asserted in the Notice, the appropriate public
10 enforcement agencies have failed to commence and diligently prosecute a cause of action against
11 DEFENDANTS under Proposition 65.

12 31. The PRODUCTS manufactured, imported, distributed, sold and/or offered for sale
13 or use in California by DEFENDANTS contained lead above the allowable state limits.

14 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 imported, distributed, sold and/or offered for sale or use by DEFENDANTS in California
16 contained lead.

17 33. Lead was present in or on the PRODUCTS in such a way as to expose individuals
18 to lead through dermal contact and ingestion during the reasonably foreseeable use of the
19 PRODUCTS.

20 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
21 continues to cause consumer and workplace exposures to lead, as such exposure is defined by 27
22 California Code of Regulations (“CCR”) § 25602(b).

23 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to lead through dermal contact and ingestion.

25 36. DEFENDANTS intended that such exposures to lead from the reasonably
26 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
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1 in the manufacture, importation, distribution, sale and offer for sale or use of PRODUCTS to
2 individuals in the State of California.

3 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable use of
6 the PRODUCTS.

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

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

15 40. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;
2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, 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 exposures to lead;
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: May 30, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.