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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

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13  
14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 BATTENFELD TECHNOLOGIES, INC.;  
18 BIG 5 SPORTING GOODS CORPORATION;  
DOES 1 – 150, inclusive,

19 Defendants.

CGC 13-535070

Case No. \_\_\_\_\_

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD,  
3 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 about exposures to Lead, a toxic chemical that is found in the  
5 vinyl/PVC interiors of bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
7 California citizens about the risks of exposures to Lead present in and on the vinyl/PVC  
8 interiors of bags manufactured, distributed, and offered for sale or use to consumers throughout  
9 the State of California.

10 3. Detectable levels of Lead are commonly found in and on the vinyl/PVC interiors of  
11 bags that defendants manufacture, distribute, sell, and offer for sale to consumers throughout the  
12 State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual . . . ." Health & Safety Code § 25249.6.

18 5. On February 27, 1987, California listed Lead pursuant to Proposition 65 as a  
19 chemical that is known to cause birth defects or other reproductive harm. Lead became subject  
20 to the "clear and reasonable warning" requirements of the act one year later on February 27,  
21 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendants manufacture, distribute, import, sell, and offer for sale without warning  
23 in California, bags with vinyl/PVC interiors containing Lead, including, but not limited to, the  
24 *Caldwell Shooting Supplies Shot Carrier Bag Four Bag Set, PN# 533117 (UPC No. 6 611120*  
25 *33117 9)*). All such bags with vinyl/PVC interiors containing Lead are referred to collectively  
26 hereinafter as the "PRODUCTS." Lead is referred to hereinafter as the "LISTED  
27 CHEMICAL."  
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1           14. BIG 5 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale  
2 or use in the State of California, or it implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person  
5 in the course of doing business within the meaning of Health and Safety Codes sections 25249.6  
6 and 25249.11.

7           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and  
8 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and  
9 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

10           17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in  
11 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
12 and 25249.11.

13           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
15 in the State of California.

16           19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the  
17 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
18 25249.11.

19           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
20 State of California.

21           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

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1 22. BATTENFELD, BIG 5, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter referred to collectively as the  
3 "DEFENDANTS."

4 **VENUE AND JURISDICTION**

5 23. Venue is proper in San Francisco, pursuant to Code of Civil Procedure sections 393,  
6 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks  
7 civil penalties against DEFENDANTS, because one or more instances of wrongful conduct  
8 occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and  
9 continue to conduct, business in this county with respect to the PRODUCTS.

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

14 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
15 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
16 association that is a citizen of the State of California, has sufficient minimum contacts in the  
17 State of California, and/or otherwise purposefully avails itself of the California market.  
18 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
19 California courts consistent with traditional notions of fair play and substantial justice.

20 **FIRST CAUSE OF ACTION**

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

22 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
23 Paragraphs 1 through 25, inclusive.

24 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
25 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be  
26 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
27 harm."

1           28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
2 and intentionally expose any individual to a chemical known to the state to cause cancer or  
3 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”  
4 Health & Safety Code § 25249.6.

5           29. On July 24, 2013, plaintiff’s sixty-day notice of violation, together with the requisite  
6 certificate of merit, was provided to BATTENFELD, BIG 5 and certain public enforcement  
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
8 LISTED CHEMICAL, workers, consumers, and other individuals in the State of California  
9 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use  
10 of the PRODUCTS, without the individual purchasers and users first having been provided with  
11 a “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12           30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
13 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
14 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
15 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
16 continuous in nature, and will continue to occur in the future.

17           31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
18 enforcement agencies have failed to commence and diligently prosecute a cause of action  
19 against DEFENDANTS under Proposition 65.

20           32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
21 use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require a  
22 “clear and reasonable” warning under Proposition 65.

23           33. DEFENDANTS knew or should have known that the PRODUCTS they  
24 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
25 CHEMICAL.

1           34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
2 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
3 reasonably foreseeable use.

4           35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
5 continue to cause consumer exposures to the LISTED CHEMICAL, as such exposures are  
6 defined by title 27 of the California Code of Regulations, section 25602(b).

7           36. DEFENDANTS have knowledge that the normal and reasonably foreseeable use of  
8 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
9 and/or ingestion during and after use.

10           37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
11 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
12 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
13 use to individuals in the State of California.

14           38. DEFENDANTS failed to provide a "clear and reasonable warning" to those workers,  
15 consumers and other individuals in California not covered by California's Occupational Safety  
16 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED  
17 CHEMICAL as a result of their reasonably foreseeable uses of the PRODUCTS.

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

24           40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
25 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
26 for each violation.

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1 41. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

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

6 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
7 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
8 each violation;

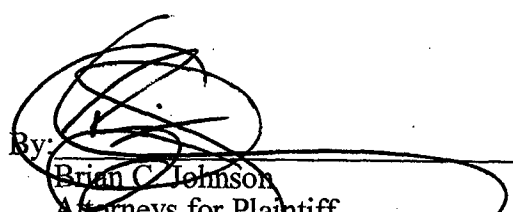
9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
11 offering the PRODUCTS for sale or use in California without first providing a "clear and  
12 reasonable warning" as defined by title 27 of the California Code of Regulations, section  
13 25603.2(a)2, regarding the harms associated with exposures the LISTED CHEMICAL;

14 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

16 Dated: October 25, 2013

17 Respectfully Submitted,  
THE CHANLER GROUP

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20 By:   
21 Brian C. Johnson  
22 Attorneys for Plaintiff  
23 ANTHONY E. HELD, PH.D., P.E.  
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