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ENDORSED
FILED
ALAMEDA COUNTY

NOV 05 2013

CLERK OF THE SUPERIOR COURT
By LYNN WILEY
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

SPECTRUM BRANDS HOLDINGS, INC.;
SPECTRUM BRANDS, INC.; UNITED
INDUSTRIES CORPORATION; UNITED
PET GROUP, INC. and DOES 1-150,
inclusive,

Defendant.

Case No. HE 13702000

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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 health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in pond nets with vinyl/PVC handle
6 grips sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on pond nets with vinyl/PVC handle grips manufactured, distributed, and offered for sale or
10 use to consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the pond nets with vinyl/PVC
12 handle grips that defendants manufacture, distribute, and offer for sale to consumers and other
13 individuals throughout the State of California.

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

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
21 subject to the "clear and reasonable warning" requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warning in California, pond nets with vinyl/PVC handle grips containing DEHP that
26 require a warning under Proposition 65 including, but not limited to, the *Tetra Pond*
27 *Telescoping Pond Net, #16504-900, UPC #0 46798 16504 0*. All such pond nets with
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1 vinyl/PVC handle grips containing DEHP are referred to collectively hereinafter as
2 "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California of the health hazards associated with exposures to DEHP in conjunction with
5 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
7 Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers or users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to DEHP. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendant for their violations of Proposition 65.

14 PARTIES

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of toxic exposures from consumer products; and he brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant SPECTRUM BRANDS HOLDINGS, INC. ("SBH") is a person in the
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

22 12. SBH manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendant SPECTRUM BRANDS, INC. ("SB") is a person in the course of doing
26 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1 14. **SB manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale**
2 **or use in the State of California, or 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. **Defendant UNITED INDUSTRIES CORPORATION (“UIC”) is a person in the**
5 **course of doing business within the meaning of Health and Safety Code sections 25249.6 and**
6 **25249.11.**

7 16. **UIC manufactures, imports, distributes, sells, and/or offers the PRODUCTS for**
8 **sale or use in the State of California, or implies by its conduct that it manufactures, imports,**
9 **distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.**

10 17. **UNITED PET GROUP, INC. (“UPG”) is a person in the course of doing business**
11 **within the meaning of Health and Safety Code sections 25249.6 and 25249.11.**

12 18. **UPG manufactures, imports, distributes, sells, and/or offers the PRODUCTS for**
13 **sale or use in the State of California, or implies by its conduct that it manufactures, imports,**
14 **distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.**

15 19. **Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a**
16 **person in the course of doing business within the meaning of Health and Safety Code sections**
17 **25249.6 and 25249.11.**

18 20. **MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,**
19 **and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,**
20 **and manufacture one or more of the PRODUCTS offered for sale or use in the State of**
21 **California.**

22 21. **Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person**
23 **in the course of doing business within the meaning of Health and Safety Code sections 25249.6**
24 **and 25249.11.**

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

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1 23. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 24. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
5 State of California.

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

11 26. SBH, SB, UIC, UPG, MANUFACTURER DEFENDANTS, DISTRIBUTOR
12 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
13 referred to as "DEFENDANTS."

14 **VENUE AND JURISDICTION**

15 27. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
16 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
17 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
18 wrongful conduct occurred, and continue to occur, in this county, and/or because
19 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
20 to the PRODUCTS.

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

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

4 **FIRST CAUSE OF ACTION**

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

6 30. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 29, inclusive.

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

12 32. Proposition 65 states, "[n]o person in the course of doing business shall
13 knowingly and intentionally expose any individual to a chemical known to the state to cause
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such
15 individual" Health & Safety Code § 25249.6.

16 33. On August 16, 2013, plaintiff's served a sixty-day notice of violation, together
17 with the requisite certificate of merit, on SBH, SB, UIC, UPG and certain public enforcement
18 agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS containing
19 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting
20 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and
21 users first having been provided with a "clear and reasonable warning" regarding the harms
22 associated with such exposures, as required by Proposition 65.

23 34. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
24 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
25 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.
26 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in
27 the future.

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1 35. After receiving plaintiff's sixty-day notice of violation, none of the appropriate
2 public enforcement agencies have commenced and diligently prosecuted a cause of action
3 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
4 subject of plaintiff's notice of violation.

5 36. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
6 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
7 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
8 consumers and other individuals in California are not exempt from the "clear and reasonable"
9 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

10 37. DEFENDANTS knew or should have known that the PRODUCTS they
11 manufactured, imported, distributed, sold, and offered for sale or use in California contained
12 DEHP.

13 38. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
14 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

15 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
16 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
17 of Regulations, section 25602(b).

18 40. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

20 41. DEFENDANTS intended that 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 offering of the PRODUCTS for sale or
23 use to consumers and other individuals in California.

24 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and other individuals in California who were or who would become exposed to
26 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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1 43. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
2 directly by California voters, individuals exposed to DEHP through dermal contact or ingestion
3 as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and
4 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for
5 which they have no plain, speedy, or adequate remedy at law.

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

9 45. As a consequence of the above-described acts, Health and Safety Code
10 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

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

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

17 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
19 offering the PRODUCTS for sale or use in California without first providing a “clear and
20 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
21 25601 *et seq.*, regarding the harms associated with exposures DEHP;

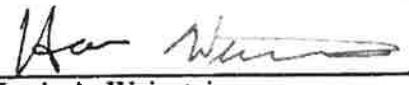
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: November 4, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 
Harris A. Weinstein
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.