

1 Jonathan A. Bornstein, State Bar No. 196345
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 Attorneys for Plaintiff
6 ANTHONY E. HELD, PhD., P.E.

EMBOISED
FILED
ALAMEDA COUNTY

NOV 27 2013

CLERK OF THE SUPERIOR COURT

Anita Dhir

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11 ANTHONY E. HELD, PhD., P.E.,

12 Plaintiff,

13 v.

14 KALTEX HOME, INC.; REVMAN
15 INTERNATIONAL, INC.; and DOES 1-150,
16 inclusive,

17 Defendants.
18

Case No. RG13704891

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

19
20
21
22
23
24
25
26
27
28
BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD., PhD., 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 vinyl/PVC
5 pillows.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to lead present in and on the vinyl/PVC
8 pillows manufactured, distributed, and offered for sale or use to consumers throughout the State
9 of California.

10 3. Detectable levels of lead are commonly found in and on the vinyl/PVC pillows
11 that defendants manufacture, distribute, and offer for sale to consumers throughout the State of
12 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. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
19 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
20 subject to the “clear and reasonable warning” requirements of the act one year later on February
21 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8. Lead is
22 referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
24 pillows containing lead as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale
26 vinyl/PVC pillows containing lead without a warning, including, but not limited to, the
27 *Tommy Bahama Home Pillow, #1128381, UPC #8 83893 18410 7.*
28

1 15. REVMAN manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale 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 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
5 persons in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

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

11 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

16 20. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
17 the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

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

25 23. KALTEX, REVMAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
27 referred to as “DEFENDANTS.”
28

1 **VENUE AND JURISDICTION**

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

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

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

18 **FIRST CAUSE OF ACTION**

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

20 27. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 26, inclusive.

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

26 29. Proposition 65 states, “[n]o person in the course of doing business shall
27 knowingly and intentionally expose any individual to a chemical known to the state to cause
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

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

10 31. On September 9, 2013, plaintiff’s sixty-day notice of violation, together with the
11 requisite certificate of merit, was provided to REVMAN and certain public enforcement
12 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
13 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
14 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
15 without the individual purchasers and users first having been provided with a “clear and
16 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

17 32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
18 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
19 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
20 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
21 continuous in nature, and will continue to occur in the future.

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

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

28

1 35. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

4 36. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
5 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
6 reasonably foreseeable use.

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

10 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
11 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
12 and/or ingestion.

13 39. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
14 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
15 accidental participation in the manufacture, importation, distribution, sale, and offering of the
16 PRODUCTS for sale or use to individuals in the State of California.

17 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
20 reasonably foreseeable uses of the PRODUCTS.

21 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
22 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
23 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
24 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
25 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
26
27
28

