

1 Brian C. Johnson, State Bar No. 235965
2 Joshua Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

ENDORSED
FILED

JUL 31 2014

Superior Court
County of Santa Clara

D. W. Rude
Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 JIMCO LAMP & MANUFACTURING
18 COMPANY; and DOES 1-150, inclusive,

19 Defendants.

Case No. **114CV268685**

**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.
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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical that is found in and on the vinyl/PVC components of lamps that are sold in California.

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

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC
11 components of lamps that defendants import, manufacture, distribute, ship, sell and/or offer for
12 sale to consumers throughout the 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 October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, lamps with vinyl/PVC components containing DEHP, including, but not
25 limited to, the *Lamp, T-17007, #3546132-2, #19 17007 UPC #0 82803 10475 8*. All such lamps
26 with vinyl/PVC components containing DEHP are referred to collectively hereinafter as the
27 “PRODUCTS.” DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6
11 and 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 20. JIMCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

22 21. Venue is proper in the County of Santa Clara, pursuant to Code of Civil
23 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
24 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
25 wrongful conduct occurred, and continue to occur, in this county, and/or because
26 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
27 respect to the PRODUCTS.
28

1 PRODUCTS, without the individual purchasers and users first having received a “clear and
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
4 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
5 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
6 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
7 continuous in nature, and will continue to occur in the future.

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

11 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
12 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
13 reasonably foreseeable uses of these products result in exposures that require a “clear and
14 reasonable” warning under Proposition 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
17 CHEMICAL.

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

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

23 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
24 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
25 and/or ingestion.

26 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
27 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
28

1 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
2 use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 workers, consumers and other individuals in California not covered by California’s
5 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
6 exposed to the LISTED CHEMICAL.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
9 CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable
10 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
11 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
12 adequate remedy at law.

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

16 39. As a consequence of the above-described acts, Health and Safety Code
17 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
18 DEFENDANTS.

19 **PRAYER FOR RELIEF**

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

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

24 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
26 offering the PRODUCTS for sale or use in California without first providing a “clear and
27
28

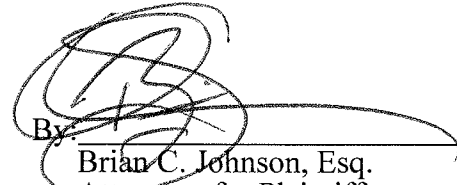
1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
2 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

5 Dated: July 29, 2014

6 Respectfully Submitted,
7 THE CHANLER GROUP

8 
9 By: _____
10 Brian C. Johnson, Esq.
11 Attorneys for Plaintiff
12 ANTHONY E. HELD, PH.D., P.E.