

1 Jonathan A. Bornstein, State Bar No. 196345  
2 THE CHANLER GROUP  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 ANTHONY E. HELD, PhD., P.E.

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 28 2014

CLERK OF THE SUPERIOR COURT  
BY Donnan Pham

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

10  
11  
12 ANTHONY E. HELD, PhD., P.E.,

13 Plaintiff,

14 v.

15 SUNLIGHT SUPPLY, INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.

Case No. **RG14746127**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

VIA 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 water sprayers  
5 with metal nozzles.

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 water sprayers  
8 with metal nozzles manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the water sprayers with  
11 metal nozzles that defendants manufacture, distribute, and offer for sale to consumers  
12 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. 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 water  
24 sprayers with metal nozzles containing lead as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale  
26 water sprayers with metal nozzles containing lead without a warning, including, but not  
27  
28

1 limited to, the *Eco Plus Multi Purpose Sprayer for Home & Garden, Product #708, 500,*  
2 *UPC #8 70883 00584 9.*

3 7. All such water sprayers with metal nozzles containing lead, described above in  
4 paragraph 6(a), shall hereinafter be referred to as the “PRODUCTS.”

5 8. Defendants’ failure to warn consumers and other individuals in the State of  
6 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
7 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
8 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
9 & (b)(1).

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

14 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

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

21 12. Defendant SUNLIGHT SUPPLY, INC. (“SSI”) is a person in the course of doing  
22 business within the meaning of Health and Safety Code section 25249.11.

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

26  
27  
28

1           14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
2 persons in the course of doing business within the meaning of Health and Safety Code section  
3 25249.11.

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

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

10           17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
11 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
12 in the State of California.

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

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

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

22           21. SSI, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and  
23 RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as  
24 “DEFENDANTS.”

### VENUE AND JURISDICTION

25  
26           22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
27 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
28

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
2 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because  
3 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the  
4 PRODUCTS.

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

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

15 **FIRST CAUSE OF ACTION**

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

17 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
18 Paragraphs 1 through 24, inclusive.

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

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

1           28. On June 20, 2014, plaintiff's sixty-day notice of violation, together with the  
2 requisite certificate of merit, was provided to SSI and certain public enforcement agencies  
3 stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the LISTED  
4 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED  
5 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the  
6 individual purchasers and users first having been provided with a "clear and reasonable  
7 warning" regarding such toxic exposures, as required by Proposition 65.

8           29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
9 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
10 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
11 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and  
12 continuous in nature, and will continue to occur in the future.

13           30. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
14 enforcement agencies have failed to commence and diligently prosecute a cause of action  
15 against DEFENDANTS under Proposition 65.

16           31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
17 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require  
18 a "clear and reasonable" warning under Proposition 65.

19           32. DEFENDANTS knew or should have known that the PRODUCTS they  
20 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
21 CHEMICAL.

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

25           34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
26 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
27 defined by title 27 of the California Code of Regulations, section 25602(b).  
28



1           2.     That the Court, pursuant to Health and Safety Code section 25249.7(a),  
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
3 offering the PRODUCTS for sale or use in California without first providing a “clear and  
4 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
5 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;


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

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

8  
9 Dated: October 28, 2014

Respectfully Submitted,  
THE CHANLER GROUP

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

By:   
Jonathan A. Bornstein  
Attorneys for Plaintiff  
ANTHONY E. HELD., PhD., P.E.