

1 Troy C. Bailey, State Bar No. 277424
2 Ryan C. Oca, State Bar No. 303113
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
ALAMEDA COUNTY

AUG 30 2016

CLERK OF THE SUPERIOR COURT
By Jamie Thomas
JAMIE THOMAS, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 NOVA ORTHO-MED INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. RG16829251

**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. HELD,
3 PH.D., P.E. (“Dr. Held”) in the public interest of the citizens of the State of California to enforce
4 the 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 products sold by defendants in
6 California.

7 2. By this Complaint, Dr. Held seeks to remedy defendants’ continuing failure to warn
8 California citizens and other individuals about the risks of exposure to DEHP present in and on
9 walker hand bags with vinyl/PVC shoulder straps 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 walker hand bags with vinyl/PVC
12 shoulder straps 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 the
17 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
18 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 reproductive harm. DEHP became subject
21 to the “clear and reasonable warning” requirements of the act one year later on October 24, 2004.
22 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. Defendants manufacture, distribute, import, sell and/or offer for sale without health
24 hazard warnings in California walker hand bags with vinyl/PVC shoulder straps including, but not
25 limited to, the *Nova Glamour Line Mobility Hand Bag/Rock N’ Red Walker Hand Bag, Item #*
26 *4005, 4005RR, UPC #6 52308 40053 4*. All walker hand bags with vinyl/PVC shoulder straps
27 containing DEHP are referred to collectively hereinafter as “PRODUCTS.”
28

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

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

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

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 20. NOVA, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
18 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
19 “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

26 22. The California Superior Court has jurisdiction over this action pursuant to California
27 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all
28

1 causes except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on Dr.
4 Held’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that is a citizen of the State of California, has sufficient minimum contacts in the State
6 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’
7 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
8 with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 24. Dr. Held realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

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

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

20 27. On November 10, 2015, Dr. Held served a supplemental sixty-day notice of
21 violation, together with the requisite certificate of merit, on NOVA and certain public enforcement
22 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,
23 purchasers and users in the State of California were being exposed to DEHP resulting from their
24 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
25 having been provided with a “clear and reasonable warning” regarding the harms associated with
26 such exposures, as required by Proposition 65.

1 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
2 sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS' violations
3 have continued beyond their receipt of Dr. Held's sixty-day notice of violation. DEFENDANTS'
4 violations are ongoing and continuous in nature, and, as such, will continue in the future.

5 29. After receiving Dr. Held's sixty-day notice of violation, none of the appropriate
6 public enforcement agencies have commenced and diligently prosecuted a cause of action against
7 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of Dr.
8 Held's notice of violation.

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

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufactured, imported, distributed, sold, and offered for sale or use in California contained
16 DEHP.

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

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

22 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
23 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

24 35. DEFENDANTS intended that exposures to DEHP from the reasonably foreseeable
25 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the
26 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
27 consumers and other individuals in California.


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

- 4. That the Court grant Dr. Held his reasonable attorneys’ fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: August 29, 2016

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.