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ENDORSED FILED
SAN MATEO COUNTY

JUN 20 2017

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN MATEO
11 UNLIMITED CIVIL JURISDICTION

12 **17C1V02735**

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

14 Plaintiff,

15 v.

16 MORRIS ROTHENBERG & SON, INC.; and
17 DOES 1-150, inclusive,

18 Defendants.

Case No. _____

**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. (“Held”) 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 products sold by defendants in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
8 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*,
9 who purchase, use or handle defendants’ products, about the risks of exposure to DEHP present in
10 and on the camp showers with vinyl/PVC tubing manufactured, purchased, imported, distributed,
11 sold and/or offered for sale or use throughout the State of California by defendants. Individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*, who purchase,
13 use or handle defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the camp showers with vinyl/PVC
15 tubing that defendants manufacture, distribute, and offer for sale to consumers and other
16 individuals throughout the State of California.

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

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

26 6. Defendants manufacture, distribute, import, sell and/or offer for sale without health
27 hazard warnings in California camp showers with vinyl/PVC tubing including, but not limited to,
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1 the *Rothco Camp Shower, Item No. 540, UPC #6 13902 05400 4*. All such camp showers with
2 vinyl/PVC tubing containing DEHP are referred to collectively hereinafter as “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, and
6 each of them, to enjoinder of such conduct as well as civil penalties for each violation. Health &
7 Safety Code § 25249.7(a) & (b)(1).

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

12 9. Pursuant to Health and Safety Code section 25249.7(b), Held also seeks civil
13 penalties against defendants 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 reduction
17 of toxic exposures from consumer products; and he brings this action in the public interest
18 pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant MORRIS ROTHENBERG & SON, INC. (“MORRIS ROTHENBERG”)
20 is a person in the course of doing business within the meaning of Health and Safety Code sections
21 25249.6 and 25249.11.

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

25 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person
26 in the course of doing business, within the meaning of Health and Safety Code §§ 25249.6 and
27 25249.11.

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

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

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

15 **FIRST CAUSE OF ACTION**

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

17 24. Held realleges and incorporates by reference, as if fully set forth herein, Paragraphs
18 1 through 23, inclusive.

19 25. 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 informed
21 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

26 27. On January 27, 2017, Held served a sixty-day notice of violation, together with the
27 requisite certificate of merit, on MORRIS ROTHENBERG and certain public enforcement
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1 agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS containing DEHP,
2 purchasers and users in the State of California were being exposed to DEHP resulting from their
3 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
4 having been provided with a "clear and reasonable warning" regarding the harms associated with
5 such exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

7 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
8 consumers and other individuals in California who were or who would become exposed to DEHP
9 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

21 **PRAYER FOR RELIEF**

22 Wherefore, Held prays for judgment against DEFENDANTS as follows:

- 23 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil
24 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
25 violation;
- 26 2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily
27 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
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1 PRODUCTS for sale or use in California without first providing a “clear and reasonable warning”
2 in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding
3 the harms associated with exposures to DEHP;

4 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
5 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
6 currently in the chain of commerce in California without a “clear and reasonable warning” as
7 defined by California Code of Regulations title 27, section 25601 *et seq.*;

8 4. That the Court grant Held his reasonable attorneys’ fees and costs of suit; and

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

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Dated: June 19, 2017

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.