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Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
K. Ross

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR SANTA CLARA COUNTY
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

JORDAN INDUSTRIES, INC.; JORDAN
SPECIALTY PLASTICS, INC.; DEFLECTO,
LLC; and DOES 1 – 15, inclusive,

Defendants.

Case No. 18CV321719

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.5)

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(Health & Safety Code § 25249.5)

1 NATURE OF THE ACTION

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 Anthony E. Held, Ph.D., P.E. in the public interest of the citizens of the State of California to
4 enforce 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 and on vinyl/PVC suction cups sold
6 by defendants in California.

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

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC suction cups that
15 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
16 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
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
21 warning to such individual . . .” Health & Safety Code § 25249.6.

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

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
27 hazard warnings in California vinyl/PVC suction cups that contain DEHP including, but not
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1 limited to, the *Deflect-O Suction Cups with Hook*, #20011RT, UPC #0 79916 01381 7. All such
2 vinyl/PVC suction cups containing DEHP are referred to collectively hereinafter as
3 “PRODUCTS.”

4 7. Defendants’ failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

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

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

15 PARTIES

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

20 11. Defendant JORDAN INDUSTRIES, INC. (“JORDAN INDUSTRIES”) is a
21 person in the course of doing business within the meaning of Health and Safety Code sections
22 25249.6 and 25249.11.

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

1 13. Defendant JORDAN SPECIALTY PLASTICS, INC. (“JORDAN PLASTICS”) is
2 a person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. JORDAN PLASTICS manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 15. Defendant DEFLECTO, LLC (“DEFLECTO”) is a person in the course of doing
9 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

10 16. DEFLECTO manufactures, imports, distributes, sells, and/or offers the
11 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
12 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
13 State of California.

14 17. Defendants DOES 1-5 (“MANUFACTURER DEFENDANTS”) are each a
15 person in the course of doing business within the meaning of Health and Safety Code sections
16 25249.6 and 25249.11.

17 18. Each of the MANUFACTURER DEFENDANTS research, test, design, assemble,
18 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
19 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use
20 in California.

21 19. Defendants DOES 6-10 (“DISTRIBUTOR DEFENDANTS”) are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 20. Each of the DISTRIBUTOR DEFENDANTS distribute, exchange, transfer,
25 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for
26 sale in the California, or each implies by its conduct that it distributes, exchanges, transfers,
27 processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers
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1 for sale in California.

2 21. Defendants DOES 11-15 (“RETAILER DEFENDANTS”) are each a person in
3 the course of doing business within the meaning of Health and Safety Code sections 25249.6
4 and 25249.11.

5 22. Each of the RETAILER DEFENDANTS offer the PRODUCTS for sale to
6 consumers and other individuals in the State of California.

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

12 24. JORDAN INDUSTRIES, JORDAN PLASTICS, DEFLECTO,
13 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
14 DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the
15 “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

17 25. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of
18 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent
19 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
20 instances of wrongful conduct occurred, and continue to occur, in this county, and because
21 DEFENDANTS conduct business in Santa Clara County with respect to the PRODUCTS.

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

26 27. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
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1 corporation or association that is a citizen of the State of California, has sufficient minimum
2 contacts in the State of California, and/or otherwise purposefully avails itself of the California
3 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 27, inclusive.

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

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

17 31. On October 24, 2017, plaintiff served a sixty-day notice of violation, together
18 with the required certificate of merit, on JORDAN INDUSTRIES, JORDAN PLASTICS,
19 DEFLECTO the California Attorney General, and all other requisite public enforcement
20 agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers and
21 other individuals in California are being exposed to DEHP resulting from their reasonably
22 foreseeable use of the PRODUCTS, without these individuals first receiving a “clear and
23 reasonable warning” regarding the harms associated with exposures to DEHP, as required by
24 Proposition 65.

25 32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
26 for sale in violation of Health and Safety Code section 25249.6, and DEFENDANTS' violations
27 have continued beyond their receipt of plaintiff's sixty-day notice of violation. As such,
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1 DEFENDANTS' violations are ongoing and continuous and, unless enjoined, will continue in
2 the future.

3 33. After receiving plaintiff's sixty-day notice of violation, no public enforcement
4 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
5 under Proposition 65 to enforce the violations alleged in plaintiff's sixty-day notice of violation.

6 34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
7 offer for sale in California cause exposures to DEHP as a result of the reasonably foreseeable
8 use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers
9 in California are not exempt from the "clear and reasonable" warning requirements of
10 Proposition 65, yet DEFENDANTS provide no warning. Plaintiff is informed and believes that
11 DEFENDANTS' violations as alleged herein have been ongoing since at least October 24,
12 2014.

13 35. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

15 36. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
16 through dermal contact and/or ingestion during reasonably foreseeable use.

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

20 38. DEFENDANTS know that the normal and reasonably foreseeable use of the
21 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

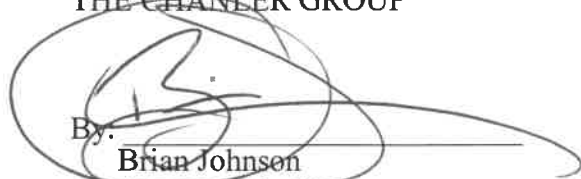
22 39. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
23 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
24 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
25 consumers in California.

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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 plaintiff 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: February 2, 2018

Respectfully submitted,
THE CHANLER GROUP

By: _____
Brian Johnson
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.