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(ENDORSED)  
**FILED**  
FEB 02 2018

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY  
**K. Ross**

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

ANTHONY E. HELD, PH.D., P.E.  
Plaintiff,  
v.  
TOY INVESTMENTS, INC.; and DOES 1 –  
15, inclusive,  
Defendants.

Case No. 18CV321718  
**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**  
(Health & Safety Code § 25249.5)

BY FAX

**NATURE OF THE ACTION**

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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 flashlights sold by  
6 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 flashlights 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 flashlights 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 flashlights that contain DEHP including, but not  
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1 limited to, the *Toysmith Cool Popsicle Point & Press LED Flashlight, #234-25-1258, UPC #0*  
2 *85761 23538 0*. All such vinyl/PVC flashlights containing DEHP are referred to collectively  
3 hereinafter as “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 TOY INVESTMENTS, INC. (“TOY INVESTMENTS”) is a person in  
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
22 and 25249.11.

23 12. TOY INVESTMENTS 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.

27 13. Defendants DOES 1-5 (“MANUFACTURER DEFENDANTS”) are each a  
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1 person in the course of doing business within the meaning of Health and Safety Code sections  
2 25249.6 and 25249.11.

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

7 15. Defendants DOES 6-10 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
8 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
9 and 25249.11.

10 16. Each of the DISTRIBUTOR DEFENDANTS distribute, exchange, transfer,  
11 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for  
12 sale in the California, or each implies by its conduct that it distributes, exchanges, transfers,  
13 processes, and transports one or more of the PRODUCTS to individuals, businesses, or retailers  
14 for sale in California.

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

18 18. Each of the RETAILER DEFENDANTS offer the PRODUCTS for sale to  
19 consumers and other individuals in the State of California.

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

25 20. TOY INVESTMENTS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
26 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
27 referred to collectively as the “DEFENDANTS.”  
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1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

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

19 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
20 Paragraphs 1 through 23, inclusive.

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

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

3 27. On October 24, 2017, plaintiff served a sixty-day notice of violation, together  
4 with the required certificate of merit, on TOY INVESTMENTS, the California Attorney  
5 General, and all other requisite public enforcement agencies alleging that, as a result of  
6 DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in California are  
7 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,  
8 without these individuals first receiving a “clear and reasonable warning” regarding the harms  
9 associated with exposures to DEHP, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
11 for sale in violation of Health and Safety Code section 25249.6, and DEFENDANTS’ violations  
12 have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As such,  
13 DEFENDANTS’ violations are ongoing and continuous and, unless enjoined, will continue in  
14 the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
16 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
17 under Proposition 65 to enforce the violations alleged in plaintiff’s sixty-day notice of violation.

18 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
19 offer for sale in California cause exposures to DEHP as a result of the reasonably foreseeable  
20 use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers  
21 in California are not exempt from the “clear and reasonable” warning requirements of  
22 Proposition 65, yet DEFENDANTS provide no warning. Plaintiff is informed and believes that  
23 DEFENDANTS’ violations as alleged herein have been ongoing since at least October 24,  
24 2014.

25 31. DEFENDANTS knew or should have known that the PRODUCTS they  
26 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.  
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1           1.     That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
2 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
3 each violation;

4           2.     That the Court, pursuant to Health and Safety Code section 25249.7(a),  
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
6 offering the PRODUCTS for sale or use in California without first providing a “clear and  
7 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
8 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

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

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

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

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16 Dated: February 2, 2018

Respectfully submitted,  
THE CHANLER GROUP

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