Laralei Paras, State Bar No. 203319 1 THE CHANLER GROUP 2560 Ninth Street 2 Parker Plaza, Suite 214 Berkeley, CA 94710-2565 3 Telephone: (510) 848-8880 Facsimile: (510) 848-8118 4 Laralei@chanler.com 5 Attorneys for Plaintiff ANTHONY E. HELD, PH.D., P.E. 6 7 8 9 10 11 12 13 Plaintiff, 14 v. 20 21 22 23 24 25 26 27

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC=18=567464

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

ASSOCIATED LEISURE PRODUCTS, INC.,

Defendant.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Health & Safety Code §25249.5 et seq.)

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

- 1. This Complaint is a representative action brought by plaintiff Anthony E. Held, Ph.D., P.E. in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate ("DEHP"), a phthalate chemical found in vinyl/PVC hoses sold by defendant into California.
- 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn California citizens and other individuals about the risks of exposure to DEHP present in and on vinyl/PVC hoses manufactured, imported, distributed, shipped, sold and/or offered for sale or use to consumers and other individuals throughout the State of California.
- 3. Detectable levels of DEHP are found in and on vinyl/PVC hoses that defendant manufactures, imports, distributes, ships, sells and/or offers for sale or use to consumers and other individuals throughout the State of California.
- 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Health & Safety Code §25249.6.
- 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became subject to the "clear and reasonable warning" requirements of the act one year later on October 24, 2004. Cal. Code Regs. tit. 27, §27001(c); Health & Safety Code §§25249.8 & 25249.10(b).
- 6. Defendant manufactures, imports, distributes, ships, sells and/or offers for sale without health hazard warnings in or into California, vinyl/PVC hoses containing DEHP including, but not limited to, Aqua EZ Pool Accessories Professional Backwash Hose, Item# 176919, Model# BWH50PRO, UPC #0 26497 00687 5. All vinyl/PVC hoses containing DEHP manufactured, imported, distributed, shipped and/or offered by defendant for sale or use in or into California are referred to collectively hereinafter as "PRODUCTS."

- 7. Defendant's failure to warn consumers and other individuals in the State of California of the health hazards associated with exposures to DEHP in conjunction with defendant's sales of the PRODUCTS are violations of Proposition 65, and subject defendant to enjoinment of such conduct as well as civil penalties for each violation. Health & Safety Code §25249.7(a), (b)(1).
- 8. For defendant's violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide purchasers or users of the PRODUCTS in California with the required warning regarding the health hazards associated with exposures to DEHP. Health & Safety Code §25249.7(a).
- 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties against defendant for its violations of Proposition 65.

PARTIES

- 10. Plaintiff Anthony E. Held, Ph.D., P.E. is a citizen of the State of California who is dedicated to protecting the health of its citizens through the elimination of toxic exposures from consumer products; he brings this action in the public interest pursuant to Health & Safety Code §25249.7(d).
- 11. Defendant Associated Leisure Products, Inc. ("AquaEZ") is a person in the course of doing business within the meaning of Health & Safety Code §§25249.6 and 25249.11.
- 12. AquaEZ manufactures, imports, distributes, ships, sells and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.
 - 13. AquaEZ shall, where appropriate, be referred to herein as "DEFENDANT."

VENUE AND JURISDICTION

14. Venue is proper in the Superior Court for the City and County of San Francisco, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANT, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANT conducted, and continue to conduct, business in the City and County of San Francisco with respect to the PRODUCTS.

- 15. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.
- 16. The California Superior Court has jurisdiction over DEFENDANT based on plaintiff's information and good faith belief that DEFENDANT is a person, firm, corporation or association that has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANT'S purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against Defendant)

- 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 16, inclusive.
- 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."
- 19. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Health & Safety Code §25249.6.
- 20. On December 13, 2017, plaintiff served a 60-day Notice of Violation (the "Notice"), together with the requisite certificate of merit, on Associated Leisure Products, Inc. and certain public enforcement agencies alleging that, as a result of DEFENDANT's sales of the vinyl/PVC hoses containing DEHP, purchasers and users in the State of California were being exposed to DEHP resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding the harms associated with such exposures, as required by Proposition 65.

- 21. DEFENDANT manufactures, distributes, imports, ships, sells and offers the PRODUCTS for sale or use in violation of Health & Safety Code §25249.6, and DEFENDANT's violations have continued beyond its receipt of plaintiff's Notice. DEFENDANT's violations are ongoing and continuous in nature, and, as such, will continue in the future.
- 22. After receiving plaintiff's Notice, none of the appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against DEFENDANT under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.
- 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, ships, sells, and offers for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable uses of the PRODUCTS. Such exposures caused by DEFENDANT and endured by consumers and other individuals in California are not exempt from the "clear and reasonable" warning requirements of Proposition 65, yet DEFENDANT provides no warning.
- 24. DEFENDANT knew or should have known that the PRODUCTS it manufactured, imported, distributed, shipped, sold, and offered for sale or use in California contained DEHP.
- 25. DEHP are present in or on the PRODUCTS in such a way as to expose individuals to DEHP through dermal contact and/or ingestion during reasonably foreseeable uses.
- 26. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and continue to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of Regulations, section 25602(b).
- 27. DEFENDANT had knowledge that the normal and reasonably foreseeable uses of the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.
- 28. DEFENDANT intended that exposures to DEHP from the reasonably foreseeable uses of the PRODUCTS would occur by its deliberate, non-accidental participation in the manufacture, importation, distribution, shipment, sale and offering of the PRODUCTS for sale or use to consumers and other individuals in California.
- 29. DEFENDANT failed to provide a "clear and reasonable warning" to those consumers and other individuals in California who were or who would become exposed to DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

- 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, individuals exposed to DEHP through dermal contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANT sold without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
- 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for each violation.
- 32. As a consequence of the above-described acts, Health & Safety Code §25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

- 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against DEFENDANT in the amount of \$2,500 per day for each violation;
- 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANT from manufacturing, distributing, shipping or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to DEHP;
- 3. That the Court, Pursuant to Health & Safety Code §25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANT recall all PRODUCTS 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.

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Dated: June 19, 2018

Respectfully Submitted,

THE CHANLER GROUP

By:

Laralei Paras Attorneys for Plaintiff LAURENCE VINOCUR