

1 Clifford A. Chanler, State Bar No. 135534
2 Brian C. Johnson, State Bar No. 235965
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 HELD, Ph.D., P.E.

ENDORSED
FILED
ALAMEDA COUNTY

JUL 22 2010

By R. Kamal Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY HELD, Ph.D., P.E.

16 Plaintiff,

17 v.

18 HERITAGE TRAVELWARE, LTD.; and
19 DOES 1-150, inclusive,

20 Defendants.

RG 10527040

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY HELD,
3 PH.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in cases for electronics sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to DEHP, present in or on cases for electronics
8 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State
9 of California.

10 3. High levels of DEHP are commonly found in and on the cases for electronics that
11 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
12 California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual ...” (Cal. Health & Safety Code § 25249.6.)

18 5. On October 23, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was therefore subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on October 23, 2004. (27 Cal. Code Regs., § 27001
22 (c); Cal. Health & Safety Code § 25249.8.) DEHP shall be referred to hereinafter as the
23 “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, and/or sell cases for electronics containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Samsonite*
26 *Netbook/Computer Case, Style #938390 (#0 23572 46707 1)*. All such cases for electronics
27 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

28 ///

1 State of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

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

8 25. The citizens of the State of California have expressly stated in the Safe Drinking
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
10 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,
11 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

12 26. Proposition 65 states, “[n]o person in the course of doing business shall
13 knowingly and intentionally expose any individual to a chemical known to the state to cause
14 cancer or reproductive toxicity without first giving clear and reasonable warning to such
15 individual....” (*Id.*)

16 27. On or about March 19, 2010, a sixty-day notice of violation, together with the
17 requisite certificate of merit, was provided to HERITAGE and various public enforcement
18 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
19 and users in the State of California were being exposed to DEHP resulting from the reasonably
20 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
21 been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
24 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
25 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

28 ///

1 29. After receipt of the claims asserted in the sixty-day notice of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

4 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contain the LISTED CHEMICAL above the allowable state
6 limits.

7 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
8 distributed, and/or offered for sale or use by DEFENDANTS in California contain the LISTED
9 CHEMICAL.

10 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
12 inhalation during the reasonably foreseeable use of the PRODUCTS.

13 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
15 defined by 27 California Code of Regulations ("CCR") section 25602(b).

16 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
18 ingestion, and/or inhalation.

19 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
20 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
21 accidental participation in the manufacture, distribution, and/or offering for sale or use of
22 PRODUCTS to individuals in the State of California.

23 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation
26 during the reasonably foreseeable use of the PRODUCTS.

27 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable use of the
2 PRODUCTS, sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
3 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
4 remedy at law.

5 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
6 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
7 Safety Code § 25249.7(b).

8 39. As a consequence of the above-described acts, California Health & Safety Code
9 § 25249.7(a) further specifically authorizes the Court to grant injunctive relief against
10 DEFENDANTS.

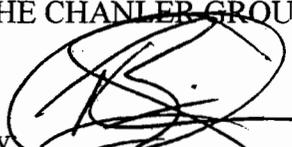
11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 13 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
14 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
15 alleged herein;
- 16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
18 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
19 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the
20 LISTED CHEMICAL;
- 21 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
22 4. That the Court grant such other and further relief as may be just and proper.

23 Dated: July 21, 2010

24 Respectfully Submitted,
25 THE CHANLER GROUP

26 By: 
27 Brian C. Johnson
28 Attorneys for Plaintiff
ANTHONY HELD, PH.D., P.E.