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ENDORSED FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUL 23 2010

CLERK OF THE COURT

CASE MANAGEMENT CONFERENCE SET

PARAM NATT

Deputy Clerk

DEC 23 2010 9⁰⁰ AM

DEPARTMENT 212

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

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

12 Plaintiff,

13 v.

14 SKY HIGH INTERNATIONAL, L.L.C.;

15 KMART CORPORATION and DOES 1-150,

16 inclusive,

17 Defendants.

CGC-10-501866

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 E.
3 HELD, 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 vinyl bookmarks and vinyl magnets 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 certain vinyl bookmarks
8 and vinyl magnets that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of DEHP are commonly found in and on vinyl bookmarks and vinyl
11 magnets that defendants manufacture, distribute, and/or offer for sale to consumers throughout
12 the State of 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 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*) DEHP shall be referred to hereinafter as the "LISTED
23 CHEMICAL."

24 6. Defendants manufacture, distribute, and/or sell: (a) vinyl bookmarks containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, *7UP Die Cut PVC*
26 *Bookmark (#8 01714 64042 7)*; and (b) vinyl magnets containing excessive levels of the
27 LISTED CHEMICAL including, but not limited to, *Hershey's 2 Pack Magnets (#8 01714*
28 *36043 1)*. All such vinyl bookmarks and vinyl magnets containing the LISTED CHEMICAL

1 shall hereinafter be referred to as the "PRODUCTS."

2 7. Defendants' failure to warn consumers and/or other individuals in the State of
3 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
4 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
5 of such conduct as well as civil penalties for each such violation.

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
7 and permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of the LISTED
9 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

10 9. Plaintiff also seeks civil penalties against defendants for their violations of
11 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

12 **PARTIES**

13 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
14 who is dedicated to protecting the health of California citizens through the elimination or
15 reduction of toxic exposures from consumer products, and brings this action in the public
16 interest pursuant to California Health & Safety Code § 25249.7.

17 11. Defendant SKY HIGH INTERNATIONAL, L.L.C., ("SKY HIGH") is a person
18 doing business within the meaning of California Health & Safety Code § 25249.11.

19 12. Defendant SKY HIGH manufactures, distributes, and/or offers the PRODUCTS
20 for sale or use in the State of California or implies by its conduct that it manufactures,
21 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

22 13. Defendant KMART CORPORATION ("KMART") is a person doing business
23 within the meaning of California Health & Safety Code § 25249.11.

24 14. Defendant KMART offers the PRODUCTS for sale or use in the State of
25 California or implies by its conduct that it offers the PRODUCTS for sale or use in the State of
26 California.

27 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
28 persons doing business within the meaning of California Health & Safety Code § 25249.11.

1 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
3 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
4 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
5 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
6 believes that such violations will continue to occur into the future.

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

10 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
11 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
12 limits.

13 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
14 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
15 LISTED CHEMICAL.

16 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
17 to expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
18 inhalation during the reasonably foreseeable use of the PRODUCTS.

19 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
20 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
21 defined by 27 CCR § 25602(b).

22 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
23 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
24 ingestion, and/or inhalation.

25 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
26 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
27 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
28 sale or use to individuals in the State of California.

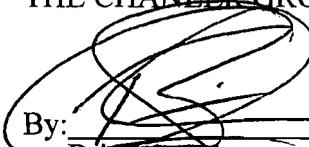
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: July 22, 2010

Respectfully Submitted,

THE CHANLER GROUP

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