



1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff Anthony E. Held, Ph.D.,  
3 P.E., in the public interest of the citizens of the State of California to enforce the People's right to be  
4 informed of the presence of di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical found in  
5 consumer products such as vinyl/PVC toiletry cases sold in the State of California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
7 California citizens about the risk of exposure to DEHP present in and on vinyl/PVC toiletry cases  
8 manufactured, distributed, sold and offered for sale or use to consumers throughout the State of  
9 California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC toiletry cases  
11 that defendants manufacture, sell, distribute and offer for sale to consumers throughout the State of  
12 California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing  
15 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
16 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
17 individual . . . ." Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
20 subject to the "clear and reasonable warning" requirements of the act one year later on October 24,  
21 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP  
22 is referred to hereinafter as the "LISTED CHEMICAL."

23 6. Significant levels of the LISTED CHEMICAL have been discovered in or on  
24 vinyl/PVC toiletry cases that are manufactured, imported, distributed and/or sold by defendants.

25 7. Examples of vinyl/PVC toiletry cases containing the LISTED CHEMICAL that are  
26 manufactured, imported, distributed and/or sold by defendants are the *We Love Pure Smile!! Bag*.

27 8. All such vinyl/PVC toiletry cases identified in paragraphs 6 and 7 above, shall  
28 hereinafter be collectively referred to as the "PRODUCTS."





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

5           23. On or about November 25, 2014, plaintiff’s sixty-day notice of violation, together with  
6 the requisite certificate of merit, was provided to ECO HOUSEWARE and certain public  
7 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
8 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
9 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the  
10 PRODUCTS, without the individual purchasers and users first having been provided with a “clear  
11 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

12           24. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
13 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,  
14 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day  
15 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and  
16 will continue to occur in the future.

17           25. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
18 enforcement agencies have failed to commence and diligently prosecute a cause of action against  
19 DEFENDANTS under Proposition 65.

20           26. The PRODUCTS manufactured, imported, sold, and/or distributed for sale or use in  
21 the State of California by DEFENDANTS contain the LISTED CHEMICAL such that they require a  
22 “clear and reasonable” warning under Proposition 65.

23           27. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
24 import, distribute, sell and/or offer for sale or use in the State of California contain the LISTED  
25 CHEMICAL.

26           28. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
27 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
28 reasonably foreseeable use.

1           29. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined  
3 by title 27 of the California Code of Regulations, section 25602(b).

4           30. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the  
5 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or  
6 ingestion.

7           31. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the  
8 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental  
9 participation in the manufacture, importation, distribution, sale, and/or offering of the PRODUCTS  
10 for sale or use to individuals in the State of California.

11           32. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers  
12 and other individuals in the State of California who were or who would become exposed to the  
13 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable  
14 uses of the PRODUCTS.

15           33. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
17 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by  
18 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
19 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

20           34. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
21 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each  
22 violation.

23           35. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
24 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in the State of California without first providing a “clear and reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;
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: February 2, 2015

Respectfully Submitted,

THE CHANLER GROUP

By: 

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