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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 BARRON'S EDUCATIONAL SERIES INC.;
16 and DOES 1-150, inclusive,

17 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 health hazards caused by exposures to di(2-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in the vinyl/PVC covers of books sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens and other individuals about the risks of exposure to DEHP present in
9 and on the vinyl/PVC covers of books manufactured, distributed, and offered for sale or use to
10 consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC covers of books
12 that defendants manufacture, distribute, and offer for sale to consumers and other individuals
13 throughout the State of California.

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

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

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California books with vinyl/PVC covers containing the LISTED
26 CHEMICAL.

1 13. BARRON’S manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in California.

4 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

7 15. MANUFACTURER DEFENDANTS each research, test, design, assemble,
8 fabricate, and manufacture the PRODUCTS, or each implies by its conduct that it researches,
9 tests, designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered
10 for sale or use in the State of California.

11 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
13 and 25249.11.

14 17. DISTRIBUTOR DEFENDANTS each distribute, exchange, transfer, process, and
15 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
16 in the State of California, or imply by their conduct that they distribute, exchange, transfer,
17 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for
18 sale or use in the State of California .

19 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
20 the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

22 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to and use by
23 consumers and other individuals in the State of California.

24 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are
25 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
26 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
27 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
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1 alleged herein. When ascertained, their true names shall be reflected in an amendment to the
2 pleading.

3 21. BARRON'S, MANUFACTURER DEFENDANTS, DISTRIBUTOR
4 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
5 referred to as "DEFENDANTS."

6 **VENUE AND JURISDICTION**

7 22. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
9 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
10 wrongful conduct occurred, and continue to occur, in this county, and/or because
11 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
12 respect to the PRODUCTS.

13 23. The California Superior Court has jurisdiction over this action pursuant to
14 California Constitution Article VI, section 10, which grants the Superior Court "original
15 jurisdiction in all causes except those given by statute to other trial courts." The statute under
16 which this action is brought does not specify any other basis of subject matter jurisdiction.

17 24. The California Superior Court has jurisdiction over DEFENDANTS based on
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
19 association that is a citizen of the State of California, has sufficient minimum contacts in the
20 State of California, and/or otherwise purposefully avails itself of the California market.
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
22 California courts consistent with traditional notions of fair play and substantial justice.

23 **FIRST CAUSE OF ACTION**

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

25 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
26 Paragraphs 1 through 24, inclusive.

27 26. In enacting Proposition 65, as stated in the preamble to the Safe Drinking Water
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1 and Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o
2 be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
3 harm.”

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

8 28. On June 20, 2014, plaintiff served a supplemental sixty-day notice of violation,
9 together with the requisite certificate of merit, on BARRON’S, the California Attorney General,
10 and other public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
11 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of
12 California were being exposed to the LISTED CHEMICAL resulting from their reasonably
13 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
14 been provided with a “clear and reasonable warning” regarding the harms associated with such
15 exposures, as required by Proposition 65.

16 29. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
18 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
19 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
20 the future.

21 30. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
22 public enforcement agencies has commenced and diligently prosecuted a cause of action against
23 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of
24 plaintiff’s notice of violation.

25 31. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
26 offer for sale or use in California cause exposures to the LISTED CHEMICAL as a result of the
27 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS are
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1 not exempt from the “clear and reasonable” warning requirements of Proposition 65, yet
2 DEFENDANTS provide no warning for those consumers and other individuals in California
3 that they expose to the LISTED CHEMICAL.

4 32. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, import, distribute, sell, and offer for sale in California contain the LISTED
6 CHEMICAL.

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

9 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
10 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of
11 the California Code of Regulations, section 25602(b).

12 35. DEFENDANTS knew that the normal and reasonably foreseeable use of the
13 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
14 ingestion.

15 36. DEFENDANTS intend that such exposures to the LISTED CHEMICAL from the
16 reasonably foreseeable use of the PRODUCTS would occur, as evidenced by their deliberate,
17 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
18 the PRODUCTS for sale or use to consumers and other individuals in California.

19 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers and other individuals in California who were or who would become exposed to the
21 LISTED CHEMICAL through dermal contact or ingestion resulting from their use of the
22 PRODUCTS.

23 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
25 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold
26 without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer,
27 irreparable harm for which they have no plain, speedy, or adequate remedy at law.
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1 39. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
2 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
3 for each violation.

4 40. As a consequence of the above-described acts, Health and Safety Code
5 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANTS.

7 **PRAYER FOR RELIEF**

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

9 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
10 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
11 each violation;

12 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
13 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
14 offering the PRODUCTS for sale or use in California without first providing a “clear and
15 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
16 25601 *et seq.*, regarding the harms associated with exposures the LISTED CHEMICAL;

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

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

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

23 Dated: December 1, 2014

24 Respectfully Submitted,
25 THE CHANLER GROUP

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