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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By JAMIE HARRIS Deputy

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

AG 07350985

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

13 Plaintiff,

14 v.

15 CLICKS WORLDWIDE, LLC; FASHION
16 ACCESSORY BAZAAR, LLC;
17 FAB/STARPOINT; and DOES 1 through
18 150, inclusive,

Defendants.

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, a toxic chemical,
5 found in certain children's watches sold in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
8 warn California citizens about their exposure to di(2-ethylhexyl)phthalate present in or on
9 certain children's watches that defendants manufacture, distribute and/or offer for sale to
10 consumers throughout the State of California.

11 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the
12 children's watches that defendants manufacture, distribute and/or offer for sale to consumers
13 throughout the State of California.

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

19 5. On January 1, 1988, California identified and listed di(2-ethylhexyl)phthalate as
20 a chemical known to cause birth defects and other reproductive harm. Di(2-
21 ethylhexyl)phthalate became subject to the warning requirement one year later and was
22 therefore subject to the "clear and reasonable warning" requirements of Proposition 65,
23 beginning on January 1, 1989. (*22 CCR § 12000(c); Cal. Health & Safety Code § 25249.8.*)
24 Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED CHEMICAL."

25 6. Defendants manufacture, distribute and/or sell children's watches containing
26 Di(2-ethylhexyl)phthalate including, but not limited to, *The Amazing Spider-Man Digital*
27 *Watch, #4301115 (#8 15980 03345 6)*. All such children's watches containing the LISTED
28 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

9
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 City and County
14 of Sacramento in the State of California who is dedicated to protecting the health of California
15 citizens through the elimination or reduction of toxic exposures from consumer products, and
16 brings this action in the public interest pursuant to California Health & Safety Code § 25249.7.

17 11. Defendant CLICKS WORLDWIDE, LLC is a person doing business within the
18 meaning of California Health & Safety Code § 25249.11.

19 12. CLICKS WORLDWIDE, LLC manufactures, distributes and/or offers the
20 PRODUCTS for sale or use in the State of California or implies by its conduct that it
21 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of
22 California.

23 13. Defendant FASHION ACCESSORY BAZAAR, LLC is a person doing business
24 within the meaning of California Health & Safety Code § 25249.11.

25 14. FASHION ACCESSORY BAZAAR, LLC manufactures, distributes and/or
26 offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it
27 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of
28 California.

1 15. Defendant FAB/STARPOINT is a person doing business within the meaning of
2 California Health & Safety Code § 25249.11.

3 16. FAB/STARPOINT manufactures, distributes and/or offers the PRODUCTS for
4 sale or use in the State of California or implies by its conduct that it manufactures, distributes
5 and/or offers the PRODUCTS for sale or use in the State of California.

7 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
8 persons doing business within the meaning of California Health & Safety Code § 25249.11.

9 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
10 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
11 engage in the process of research, testing, designing, assembling, fabricating and/or
12 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

13 19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
14 doing business within the meaning of California Health & Safety Code § 25249.11.

15 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
16 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
17 the State of California.

18 21. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
19 business within the meaning of California Health & Safety Code § 25249.11.

20 22. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 State of California.

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

27 24. CLICKS WORLDWIDE, LLC, FASHION ACCESSORY BAZAAR, LLC,
28 FAB/STARPOINT, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,

1 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
2 “DEFENDANTS.”

3 **VENUE AND JURISDICTION**

4 25. Venue is proper in the Alameda County Superior Court, pursuant to Code of
5 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
7 because one or more instances of wrongful conduct occurred, and continues to occur, in the
8 County of Sacramento, and/or because DEFENDANTS conducted, and continue to conduct,
9 business in this County with respect to the PRODUCTS.

10 26. The California Superior Court has jurisdiction over this action pursuant to
11 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
12 in all causes except those given by statute to other trial courts.” The statute under which this
13 action is brought does not specify any other basis of subject matter jurisdiction.

14 27. The California Superior Court has jurisdiction over DEFENDANTS based on
15 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
16 association that either are citizens of the State of California, have sufficient minimum contacts
17 in the State of California, or otherwise purposefully avail themselves of the California market.
18 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
19 California courts consistent with traditional notions of fair play and substantial justice.

20 **FIRST CAUSE OF ACTION**

21 (Violation of Proposition 65)

22 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
23 Paragraphs 1 through 27, inclusive.

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

28 30. Proposition 65 states, “No person in the course of doing business shall

1 knowingly and intentionally expose any individual to a chemical known to the state to cause
2 cancer or reproductive toxicity without first giving clear and reasonable warning to such
3 individual” (*Id.*)

4 31. On August 2, 2007, a sixty-day notice of violation, together with the requisite
5 certificate of merit, was provided to CLICKS WORLDWIDE, LLC, FASHION ACCESSORY
6 BAZAAR, LLC, FAB/STARPOINT, and various public enforcement agencies, stating that as a
7 result of DEFENDANTS’ sale of PRODUCTS, purchasers and users in the State of California
8 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses
9 of the PRODUCTS, without the individual purchasers and users first having been provided with
10 a “clear and reasonable warning” regarding such toxic exposures.

11 32. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
12 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
13 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
14 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
15 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
16 believes that such violations will continue to occur into the future.

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

20 34. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
21 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
22 limits.

23 35. DEFENDANTS knew or should have known that the PRODUCTS
24 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
25 contained the LISTED CHEMICAL.

26 36. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way
27 as to expose individuals to the LISTED CHEMICAL through dermal contact and ingestion
28

1 during the reasonably foreseeable use of the PRODUCTS.

2 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
3 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
4 defined by 22 CCR § 12601(b).

5 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
7 of the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal
8 contact and ingestion.

9 39. DEFENDANTS, and each of them, intended that such exposures to the LISTED
10 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
11 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or
12 use of PRODUCTS to individuals in the State of California.

13 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
14 consumers and/or other individuals in the State of California who were or who could become
15 exposed to the LISTED CHEMICAL through dermal contact and ingestion during the
16 reasonably foreseeable use of the PRODUCTS.

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

23 42. As a consequence of the above-described acts, DEFENDANTS, and each of
24 them, are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to
25 California Health & Safety Code § 25249.7(b).

26 43. As a consequence of the above-described acts, California Health & Safety Code
27 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
28 DEFENDANTS.

