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11 ENDORSED
12 FILED
13 ALAMEDA COUNTY

14 OCT 15 2007

15 CLERK OF THE SUPERIOR COURT
16 By C. PITTS Deputy

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE COUNTY OF ALAMEDA
19 UNLIMITED CIVIL JURISDICTION

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

21 Plaintiff,

22 v.

23 M.Z. BERGER & COMPANY, INC.; and
24 DOES 1 through 150, inclusive,

25 Defendants.

26 Case No.

RG07351032

27 **COMPLAINT FOR CIVIL PENALTIES
28 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, *Spongebob Squarepants LCD Watch*,
27 *#3235546, SBP265 (#0 49353 59307 4)*. 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 9. Plaintiff also seeks civil penalties against defendants for their violations of
10 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

11 PARTIES

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

16 11. Defendant M.Z. BERGER & COMPANY, Inc. is a person doing business within
17 the meaning of California Health & Safety Code § 25249.11.

18 12. M.Z. BERGER & COMPANY, Inc. manufactures, distributes and/or offers the
19 PRODUCTS for sale or use in the State of California or implies by its conduct that it
20 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of
21 California.

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

24 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
26 engage in the process of research, testing, designing, assembling, fabricating and/or
27 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.
28

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

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

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

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

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

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

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
22 of the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal
23 contact and ingestion.

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

28

1 exposures to the LISTED CHEMICAL;

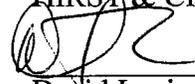
2 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

3 4. That the Court grant such other and further relief as may be just and proper.

4 Dated: October 12, 2007

5 Respectfully Submitted,

6 HIRST & CHANLER LLP

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8 David Lavine

9 Attorney for Plaintiff

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

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