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Sacramento
Dennis Jones, Executive
Officer
02/11/2008
trasales
By _____, Deputy
Case Number:
34-2008-00003275-CU-MC-GDS

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

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

13 Plaintiff,

14 v.

15 ENCHANTÉ ACCESSORIES, INC.;
16 MICHAELS STORES, INC.; and DOES 1
through 150, inclusive,

17 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code §25249.6 et seq.)

BY FAX

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 vinyl bathroom toys/ children's items manufactured and sold by defendants in California.

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

10 3. High levels of DEHP are commonly found in and on vinyl bathroom toys/
11 children's items that defendants manufacture, distribute and/or offer for sale to consumers
12 throughout 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 of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual. . . ." (*Cal. Health & Safety Code* §25249.6.)

18 5. On January 1, 1988, California identified and listed DEHP as a chemical known to
19 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 January 1, 1989. (*CCR §12000(c); Cal. Health &*
22 *Safety Code* §25249.8.) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture and sell vinyl bathroom toys/ children's items containing
24 DEHP including, but not limited to, *Life is a Beach White Pineapple Body Soap w/ Duck (#7*
25 *29016 05734 0)*, which contain excessive levels of the LISTED CHEMICAL. All such vinyl
26 bathroom toys/ children's items containing the LISTED CHEMICAL shall hereinafter be referred
27 to as the "PRODUCTS."
28

1 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

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

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

17 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
18 to expose individuals to the LISTED CHEMICAL through ingestion during the reasonably
19 foreseeable use of the PRODUCTS.

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

23 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion.

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

2 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
3 consumers and/or other individuals in the State of California who were or who could become
4 exposed to the LISTED CHEMICAL through ingestion during the reasonably foreseeable use of
5 the PRODUCTS.

6 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
7 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion
8 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without
9 “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which
10 harm they have no plain, speedy or adequate remedy at law.

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

14 41. As a consequence of the above-described acts, California Health & Safety Code
15 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 DEFENDANTS.

17 42. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
18 set forth hereinafter.

19 **PRAYER FOR RELIEF**

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

21 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
22 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
23 violation alleged herein;

24 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
26 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
27 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to
28

1 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.

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5 Dated: February 7, 2008

Respectfully Submitted,

HIRST & CHANLER LLP

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9 Christopher M. Martin
10 Attorneys for Plaintiff
11 ANTHONY E. HELD, PH.D., P.E.

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