

1 Clifford A. Chanler, State Bar No. 135534
David R. Bush, State Bar No. 154551
2 Laurence D. Haveson, State Bar No. 152631
HIRST & CHANLER LLP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8188

ENDORSED
FILED
ALAMEDA COUNTY

MAR 21 2008

CLERK OF THE SUPERIOR COURT
By C. PITTS Deputy

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

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, Ph.D., P.E.,

14 Plaintiff,

15 v.

16 SARAMAX APPAREL GROUP, INC.; and
17 DOES 1 through 150, inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. **RG08378050**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1

2

6

10

13

18

24

2.7

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

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

9. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

PARTIES

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

11. Defendant SARAMAX APPAREL GROUP, INC. (“SARAMAX”) is a person in the course of doing business within the meaning of California Health & Safety Code § 25249.11.

12. SARAMAX manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

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

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

15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons in the course of doing business within the meaning of California Health & Safety Code § 25249.11

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

4 17. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons in the
5 course of doing business within the meaning of California Health & Safety Code § 25249.11.

6 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
7 of California.

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

13 20. SARAMAX, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
15 hereinafter as "DEFENDANTS."

16 **VENUE AND JURISDICTION**

17 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
18 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because one
19 or more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda
20 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with
21 respect to the PRODUCTS.

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

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

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

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

12 26. Proposition 65 states, "No person in the course of doing business shall knowingly
13 and intentionally expose any individual to a chemical known to the state to cause cancer or
14 reproductive toxicity without first giving clear and reasonable warning to such individual . . ."
15 (*Id.*)

16 27. On November 20, 2007, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to SARAMAX and various public enforcement agencies, stating
18 that as a result of DEFENDANTS' sale of PRODUCTS, purchasers and users in the State of
19 California were being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably
20 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
21 provided with a "clear and reasonable warning" regarding such toxic exposures.

22 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
24 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
25 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
26 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

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

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

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

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

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

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

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

23 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 consumers and/or other individuals in the State of California who were or who could become
25 exposed to the LISTED CHEMICALS through dermal contact and ingestion during the reasonably
26 foreseeable use of the PRODUCTS.

27 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
2 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

7 39. As a consequence of the above-described acts, California Health & Safety Code
8 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
11 set forth hereinafter.

12 ///

13 ///

14 ///

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
8 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and
9 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to
10 the LISTED CHEMICAL;


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

12 4. That the Court grant such other and further relief as may be just and proper.
13

14 Dated: March 21, 2008

Respectfully Submitted,

15 HIRST & CHANLER LLP

16 
17 Clifford Chanler
18 Attorney for Plaintiff
19 ANTHONY E. HELD, Ph.D., P.E.
20
21
22
23
24
25
26
27
28