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CASE MANAGEMENT CONFERENCE SET

APR - 3 2009 - 9⁰⁰AM

DEPARTMENT 212

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

ASCENDIA BRANDS CO., INC.;
BURLINGTON COAT FACTORY
WAREHOUSE CORPORATION; and DOES 1
through 150, inclusive,

Defendants.

Case No. **CGC - 08 - 481439**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2009 OCT 30 AM 12:58
BY: ~~ELIAS BUTT~~

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, found
5 in certain vinyl bathroom toys/children’s items sold in California.

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

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the vinyl
11 bathroom toys/children’s items that defendants manufacture, distribute and/or offer for sale to
12 consumers 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 October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as a
19 chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the “clear and
21 reasonable warning” requirements of Proposition 65, beginning on January 1, 1989. (*27 CCR*
22 *§27001; Cal. Health & Safety Code §25249.8.*) Di(2-ethylhexyl)phthalate shall hereinafter be
23 referred to as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute and/or offer for sale vinyl bathroom
25 toys/children’s items containing di(2-ethylhexyl)phthalate including, but not limited to, *Baby Magic*
26 *Starter Basket (#0 70194 04484 5)*. All such vinyl bathroom toys/children’s items containing the
27 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

12 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state 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 to
18 expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
19 reasonably 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 by
22 27 CCR §25601(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 dermal contact and
25 ingestion.

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

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

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

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

15 41. As a consequence of the above-described acts, California Health & Safety Code
16 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against 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 and/or offering the PRODUCTS for sale or use in California, without providing “clear
27 and reasonable warnings” as defined by 27 CCR §25601, as to the harm associated with exposures
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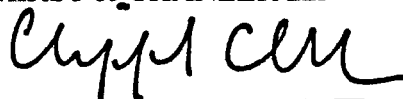
to the LISTED CHEMICAL;

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

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

Dated: October 29, 2008

Respectfully Submitted,
HIRST & CHANLER LLP



Clifford A. Chanler
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.