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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 ACCESSORY NETWORK GROUP LLC;  
19 BABYVISION, INC.; BURLINGTON COAT  
20 FACTORY WAREHOUSE  
21 CORPORATION; CUTIE PIE BABY, INC.;  
22 DARON FASHIONS, INC.; FASHION  
23 OPTIONS, INC.; HASELSON  
24 INTERNATIONAL TRADING, INC.; S.  
25 GOLDBERG AND CO. INC.;  
26 SGFOOTWEAR/MESSER GROUP, INC.;  
27 STUDIO RAY, LLC; FLEET STREET LTD.;  
28 ZERO XPOSUR; TRI-COSTAL DESIGN  
GROUP INC; and DOES 11 through 150,  
inclusive,

Defendants.

Case No. CGC-08-481439

**SECOND AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

ENDORSED  
FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

JUN 05 2009

GORDON M. PARKER, Clerk  
Deputy Clerk

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 children's vinyl bags, vinyl bathroom toys, sporting toys, and inflatable vinyl toys sold  
6 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 certain  
9 children's vinyl bags, vinyl bathroom toys, sporting toys, and inflatable vinyl toys that  
10 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
11 California.

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

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

20 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
21 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate  
22 became subject to the warning requirement one year later and was therefore subject to the "clear  
23 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27  
24 *CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

25 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the "LISTED  
26 CHEMICAL."

27 7. For purposes of this Complaint, DEFENDANTS' manufacture, distribute and/or  
28 offer for sale items containing excessive levels of the LISTED CHEMICAL in the items *Airwalk*

1 Hooded Jacket, Style T2335BC (#7 57649 12651 5); Baby Magic Starter Basket (#0 70194  
2 04484 5); Barney Touch Down Shoes, Style AV11182AGN-T; Disney/Pixar Cars 11 Piece Study  
3 Kit (#7 61014 05764 1); Disney's Winnie the Pooh Lunch Bag, (#8 13274 00257 7; Hawke &  
4 Co. Outfitter Jacket, Black #28050BU, (#6 06055 88855 8); Hot Wheels Cinch and Sack Wallet  
5 Set, (#0 93177 70668 4); Lovable Friends Baby Booties, Style 01189 (#6 60168 01189 0);  
6 Roadblock Hooded Sweatshirt, HGrey (#7 04194 23840 8); Scooby-Doo! Bag (#8 13274 00800  
7 5); Soccer Insulated Lunch Cooler, BFK000413 (#0 93177 40606 4); Special Day It's A Boy  
8 Mini Football, Item # SDFB-BOY, (#7 15896 12101 1); Winnie the Pooh Hat & Gloves Set, RN  
9 #87429; and/or Zero Xposur Authentic Element Protector Jacket, Style 10440. The items shall  
10 collectively be referred to hereinafter as the "PRODUCTS."

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

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

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

### 21 PARTIES

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

26 12. Defendant ACCESSORY NETWORK GROUP LLC ("ANG") is a person doing  
27 business within the meaning of California Health & Safety Code § 25249.11.  
28

1           13. Defendant BABYVISION, INC. (“BABYVISION”) is a person doing business  
2 within the meaning of California Health & Safety Code § 25249.11.

3           14. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION.  
4 (“BURLINGTON”) is a person doing business within the meaning of California Health & Safety  
5 Code § 25249.11.

6           15. Defendant CUTIE PIE BABY, INC. (“CUTIE PIE”) is a person doing business  
7 within the meaning of California Health & Safety Code § 25249.11.

8           16. Defendant DARON FASHIONS, INC. (“DARON”) is a person doing business  
9 within the meaning of California Health & Safety Code § 25249.11.

10          17. Defendant FASHION OPTIONS, INC. (“FASHION OPTIONS”) is a person  
11 doing business within the meaning of California Health & Safety Code § 25249.11.

12          18. Defendant HASELSON INTERNATIONAL TRADING, INC. (“HASELSON”)  
13 is a person doing business within the meaning of California Health & Safety Code § 25249.11.

14          19. Defendant S. GOLDBERG AND CO. INC. (“GOLDBERG”) is a person doing  
15 business within the meaning of California Health & Safety Code § 25249.11.

16          20. Defendant SGFOOTWEAR/MESSER GROUP, INC. (“SGFOOTWEAR”) is a  
17 person doing business within the meaning of California Health & Safety Code § 25249.11.

18          21. Defendant STUDIO RAY, LLC, FLEET STREET LTD. (“STUDIO RAY”) is a  
19 person doing business within the meaning of California Health & Safety Code § 25249.11.

20          22. Defendant ZERO XPOSUR (“ZERO”) is a person doing business within the  
21 meaning of California Health & Safety Code § 25249.11.

22          23. Defendant TRI-COSTAL DESIGN GROUP INC. (“TRI-COSTAL”) is a person  
23 doing business within the meaning of California Health & Safety Code § 25249.11.

24          24. Defendants ANG, BABYVISION, BURLINGTON, CUTIE PIE, DARON,  
25 FASHION OPTIONS, HASELSON, GOLDBERG, SGFOOTWEAR, STUDIO RAY, ZERO,  
26 and TRI-COSTAL manufacture, distribute, and/or offer the PRODUCTS for sale or use in the  
27 State of California or implies by their conduct that they manufacture, distribute and/or offer the  
28 PRODUCTS for sale or use in the State of California.



1 because one or more instances of wrongful conduct occurred, and continues to occur, in the City  
2 and County of San Francisco a and/or because DEFENDANTS conducted, and continue to  
3 conduct, business in this County with respect to the PRODUCTS.

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

8 35. The California Superior Court has jurisdiction over DEFENDANTS based on  
9 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
10 association that either are citizens of the State of California, have sufficient minimum contacts in  
11 the State of California, or otherwise purposefully avail themselves of the California market.  
12 DEFENDANTS’ purposeful avilment renders the exercise of personal jurisdiction by California  
13 courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 – Against All Defendants)**

16 36. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 35, inclusive.

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

22 38. Proposition 65 states, “No person in the course of doing business shall knowingly  
23 and intentionally expose any individual to a chemical known to the state to cause cancer or  
24 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
25 (*Id.*)

26 39. On July 10, 2008, a sixty-day notice of violation, together with the requisite  
27 certificate of merit, was provided to BURLINGTON and various public enforcement agencies  
28 stating that as a result of this defendant’s sales of the *Got Milk? 4 Piece Bottle Cooler Set*,

1 #5184BMD (#0 84134 05184 7) and *Special Day It's A Boy Mini Football, Item # SDFB-BOY,*  
2 (*#7 15896 12101 1*), purchasers and users in the State of California were being exposed to the  
3 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Got Milk? 4 Piece*  
4 *Bottle Cooler Set, #5184BMD (#0 84134 05184 7) and Special Day It's A Boy Mini Football,*  
5 *Item # SDFB-BOY, (#7 15896 12101 1,* without the individual purchasers and users first having  
6 been provided with a “clear and reasonable warning” regarding such toxic exposures.

7 40. On October 10, 2008, a sixty-day notice of violation, together with the requisite  
8 certificate of merit, was provided to BURLINGTON, CUTIE PIE and various public  
9 enforcement agencies stating that as a result of these defendants’ sales of the *Baby Magic Starter*  
10 *Basket (#0 70194 04484 5),* purchasers and users in the State of California were being exposed to  
11 the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Baby Magic*  
12 *Starter Basket (#0 70194 04484 5),* without the individual purchasers and users first having been  
13 provided with a “clear and reasonable warning” regarding such toxic exposures.

14 41. On November 28, 2008, a sixty-day notice of violation, together with the requisite  
15 certificate of merit, was provided to ANG and various public enforcement agencies stating that  
16 as a result of this defendant’s sales of the *Soccer Insulated Lunch Cooler, BFK000413 (#0 93177*  
17 *40606 4),* purchasers and users in the State of California were being exposed to the LISTED  
18 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
19 individual purchasers and users first having been provided with a “clear and reasonable warning”  
20 regarding such toxic exposures.

21 42. On January 26, 2009, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to TRI-COSTAL and various public enforcement agencies  
23 stating that as a result of this defendant’s sales of the *Disney/Pixar Cars 11 Piece Study Kit (#7*  
24 *61014 05764 1),* purchasers and users in the State of California were being exposed to the  
25 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Disney/Pixar Cars*  
26 *11 Piece Study Kit (#7 61014 05764 1),* without the individual purchasers and users first having  
27 been provided with a “clear and reasonable warning” regarding such toxic exposures.

1           43.     On January 26, 2009, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to HASELSON and various public enforcement agencies  
3 stating that as a result of this defendant's sales of the *Roadblock Hooded Sweatshirt, HGrey (#7*  
4 *04194 23840 8)*, purchasers and users in the State of California were being exposed to the  
5 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Roadblock Hooded*  
6 *Sweatshirt, HGrey (#7 04194 23840 8)*, without the individual purchasers and users first having  
7 been provided with a "clear and reasonable warning" regarding such toxic exposures.

8           44.     On February 24, 2009, a sixty-day notice of violation, together with the requisite  
9 certificate of merit, was provided to ANG, BURLINGTON and various public enforcement  
10 agencies stating that as a result of these defendants' sales of the *Soccer Insulated Lunch Cooler,*  
11 *BFK000413 (#0 93177 40606 4), Hot Wheels Cinch and Sack Wallet Set, (#0 93177 70668 4),*  
12 *and Winnie the Pooh Hat & Gloves Set, RN #87429,* purchasers and users in the State of  
13 California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
14 foreseeable uses of the *Soccer Insulated Lunch Cooler, BFK000413 (#0 93177 40606 4), Hot*  
15 *Wheels Cinch and Sack Wallet Set, (#0 93177 70668 4), and Winnie the Pooh Hat & Gloves Set,*  
16 *RN #87429,* without the individual purchasers and users first having been provided with a "clear  
17 and reasonable warning" regarding such toxic exposures.

18           45.     On March 5, 2009, a sixty-day notice of violation, together with the requisite  
19 certificate of merit, was provided to DARON, BURLINGTON and various public enforcement  
20 agencies stating that as a result of these defendants' sales of the *Hawke & Co. Outfitter Jacket,*  
21 *Black #28050BU, (#6 06055 88855 8),* purchasers and users in the State of California were being  
22 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
23 *Hawke & Co. Outfitter Jacket, Black #28050BU, (#6 06055 88855 8),* without the individual  
24 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
25 such toxic exposures.

26           46.     On April 2, 2009, a sixty-day notice of violation, together with the requisite  
27 certificate of merit, was provided to FASHION OPTIONS, BURLINGTON and various public  
28 enforcement agencies stating that as a result of these defendants' sales of the *Airwalk Hooded*

1 *Jacket, Style T2335BC (#7 57649 12651 5)*, purchasers and users in the State of California were  
2 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
3 *Airwalk Hooded Jacket, Style T2335BC (#7 57649 12651 5)*, without the individual purchasers  
4 and users first having been provided with a “clear and reasonable warning” regarding such toxic  
5 exposures.

6 47. On April 2, 2009, a sixty-day notice of violation, together with the requisite  
7 certificate of merit, was provided to ANG, BURLINGTON and various public enforcement  
8 agencies stating that as a result of these defendants’ sales of the *Disney’s Winnie the Pooh Lunch*  
9 *Bag, (#8 13274 00257 7)*, purchasers and users in the State of California were being exposed to  
10 the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Disney’s Winnie*  
11 *the Pooh Lunch Bag, (#8 13274 00257 7)*, without the individual purchasers and users first  
12 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

13 48. On April 30, 2009, a sixty-day notice of violation, together with the requisite  
14 certificate of merit, was provided to GOLDBERG, SGFOOTWEAR and various public  
15 enforcement agencies stating that as a result of these defendants’ sales of the *Barney Touch*  
16 *Down Shoes, Style AV11182AGN-T*, purchasers and users in the State of California were being  
17 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
18 *Barney Touch Down Shoes, Style AV11182AGN-T*, without the individual purchasers and users  
19 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 49. On April 30, 2009, a sixty-day notice of violation, together with the requisite  
21 certificate of merit, was provided to BABYVISION and various public enforcement agencies  
22 stating that as a result of this defendant’s sales of the *Lovable Friends Baby Booties, Style 01189*  
23 *(#6 60168 01189 0)*, purchasers and users in the State of California were being exposed to the  
24 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the *Lovable Friends*  
25 *Baby Booties, Style 01189 (#6 60168 01189 0)*, without the individual purchasers and users first  
26 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 50. On May 22, 2009, a sixty-day notice of violation, together with the requisite  
28 certificate of merit, was provided to STUDIO RAY, FLEET STREET, ZERO and various public

1 enforcement agencies stating that as a result of these defendants' sales of the *Zero Xposur*  
2 *Authentic Element Protector Jacket, Style 10440*, purchasers and users in the State of California  
3 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses  
4 of the *Zero Xposur Authentic Element Protector Jacket, Style 10440*, without the individual  
5 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
6 such toxic exposures.

7 51. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
9 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
10 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
11 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and  
12 believes that such violations will continue to occur into the future.

13 52. After receipt of the claims asserted in the sixty-day notices of violation, the  
14 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
15 cause of action against DEFENDANTS under Proposition 65.

16 53. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
17 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
18 limits.

19 54. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
20 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
21 LISTED CHEMICAL.

22 55. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
23 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
24 during the reasonably foreseeable use of the PRODUCTS.

25 56. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
26 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
27 by 27 CCR § 25602(b).

28



