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Assignments
Case Management 45
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Minors Compromise 42

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Superior Court Of California,
Sacramento
Dannia Jones, Executive
Officer
02/20/2019
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By _____, Deputy
Case Number:
24-2008-0015020-01-MC-GDS

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

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

Plaintiff,

v.

ESSEX MANUFACTURING, INC.; and
DOES 1-150, inclusive,

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 and lead, toxic
5 chemicals found in children's jackets sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate and lead present in or
8 on certain children's jackets 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 and lead are commonly found in and
11 children's jackets 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
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as
19 a 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
21 and reasonable warning" requirements of Proposition 65, beginning on October 24, 2004. (27
22 *CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

23 6. On February 27, 1987, the State listed lead as a chemical known to cause birth
24 defects and other reproductive harm. This chemical became subject to the warning requirement
25 one year later and was therefore subject to the "clear and reasonable warning" requirements of
26 Proposition 65, beginning on February 27, 1988. (27 *CCR § 27001; Cal. Health & Safety Code*
27 *§ 25249.8.*)

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

3 30. Also on October 17, 2008, a sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to ESSEX MANUFACTURING and various public
5 enforcement agencies stating that as a result of this DEFENDANTS’ sales of the PRODUCTS,
6 purchasers and users in the State of California were being exposed to lead resulting from the
7 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
8 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

18 33. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
19 California by DEFENDANTS contained the LISTED CHEMICALS above the allowable state
20 limits.

21 34. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
22 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
23 LISTED CHEMICALS.

24 35. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
25 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
26 during the reasonably foreseeable use of the PRODUCTS.

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1 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to the LISTED CHEMICALS, as such exposure is
3 defined by 27 CCR § 25602(b).

4 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal contact
6 and/or ingestion.

7 38. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
8 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
9 accidental participation in the manufacture, distribution, and/or offer for sale or use of
10 PRODUCTS to individuals in the State of California.

11 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and/or other individuals in the State of California who were or who could become
13 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
14 reasonably foreseeable use of the PRODUCTS.

15 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
16 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal
17 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold
18 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
19 suffer, irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

20 41. As a consequence of the above-described acts, DEFENDANTS are liable for a
21 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
22 Safety Code § 25249.7(b).

23 42. As a consequence of the above-described acts, California Health & Safety Code
24 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

26 43. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
27 hereinafter.

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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
5 each violation alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the
10 LISTED CHEMICALS;

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 Respectfully Submitted,

14 Dated: February 20, 2009

HIRST & CHANLER LLP

15
16 By: 

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