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FILED
Superior Court Of California,
Sacramento
Dennis Jones, Executive
Officer
02/20/2009
avlaisavich
By _____, Deputy
Case Number:
34-2009-00035040-CU-MC-GDS

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

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ANTHONY E. HELD, Ph.D., P.E.,
Plaintiff,
v.
SLY FOX APPAREL GROUP, LLC; PARIGI
GROUP LTD.; KEMISTRE 8 LLC;
AKADEMIKS; 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, a toxic chemical
5 found in children’s hooded sweatshirts with vinyl zipper pulls 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 present in or on
8 certain children’s hooded sweatshirts with vinyl zipper pulls that defendants manufacture,
9 distribute and/or offer for sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl) phthalate are commonly found in and children’s
11 hooded sweatshirts with vinyl zipper pulls that defendants manufacture, distribute and/or offer
12 for sale to 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
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. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell children’s hooded sweatshirts with
26 vinyl zipper pulls containing excessive levels of the LISTED CHEMICAL including, but not
27 limited to, the *Akademiks IB ALVR PRT Hoodie, Style: AS81268 (#8 81073 262201 0)*. All such
28

1 children's hooded sweatshirts with vinyl zipper pulls containing the LISTED CHEMICAL shall
2 hereinafter be referred to as the "PRODUCTS."

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

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

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

13 **PARTIES**

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

18 12. Defendant SLY FOX APPAREL GROUP, LLC ("SLY FOX") is a person doing
19 business within the meaning of California Health & Safety Code § 25249.11.

20 13. Defendant SLY FOX manufactures, distributes, and/or offers the PRODUCTS for
21 sale or use in the State of California or implies by its conduct that it manufactures, distributes
22 and/or offers the PRODUCTS for sale or use in the State of California.

23 14. Defendant PARIGI GROUP, LTD. ("PARIGI") is a person doing business within
24 the meaning of California Health & Safety Code § 25249.11.

25 15. Defendant PARIGI manufactures, distributes, and/or offers the PRODUCTS for
26 sale or use in the State of California or implies by its conduct that it manufactures, distributes
27 and/or offers the PRODUCTS for sale or use in the State of California.

1 16. Defendant KEMISTRE 8, LLC (“KEMISTRE”) is a person doing business within
2 the meaning of California Health & Safety Code § 25249.11.

3 17. Defendant KEMISTRE manufactures, distributes, and/or offers the PRODUCTS
4 for sale or use in the State of California or implies by its conduct that it manufactures, distributes
5 and/or offers the PRODUCTS for sale or use in the State of California.

6 18. Defendant AKADEMIKS is a person doing business within the meaning of
7 California Health & Safety Code § 25249.11.

8 19. Defendant AKADEMIKS manufactures, distributes, and/or offers the
9 PRODUCTS for sale or use in the State of California or implies by its conduct that it
10 manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California.

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

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

17 22. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
18 doing business within the meaning of California Health & Safety Code § 25249.11.

19 23. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
20 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
21 the State of California.

22 24. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
23 business within the meaning of California Health & Safety Code § 25249.11.

24 25. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

26 26. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
27 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
28 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that

1 each of the fictitiously named defendants is responsible for the acts and occurrences herein
2 alleged. When ascertained, their true names shall be reflected in an amended complaint.

3 27. SLY FOX, PARIGI, KEMISTRE, AKADEMIKS, MANUFACTURER
4 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
5 appropriate, collectively be referred to hereinafter as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 28. Venue is proper in the Sacramento County Superior Court, pursuant to Code of
8 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
9 because one or more instances of wrongful conduct occurred, and continues to occur, in the
10 County of Sacramento a and/or because DEFENDANTS conducted, and continue to conduct,
11 business in this County with respect to the PRODUCTS.

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

16 30. The California Superior Court has jurisdiction over DEFENDANTS based on
17 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
18 association that either are citizens of the State of California, have sufficient minimum contacts in
19 the State of California, or otherwise purposefully avail themselves of the California market.
20 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
21 courts consistent with traditional notions of fair play and substantial justice.

22 **FIRST CAUSE OF ACTION**

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

24 31. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
25 Paragraphs 1 through 30, inclusive.

26 32. The citizens of the State of California have expressly stated in the Safe Drinking
27 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.

28

1 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
2 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

7 34. On November 28, 2008, a sixty-day notice of violation, together with the requisite
8 certificate of merit, was provided to SLY FOX, PARIGI, KEMISTRE, AKADEMIKS and
9 various public enforcement agencies stating that as a result of DEFENDANTS’ sales of the
10 PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED
11 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
12 individual purchasers and users first having been provided with a “clear and reasonable warning”
13 regarding such toxic exposures.

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

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

23 37. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
24 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
25 limits.

26 38. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
27 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
28 LISTED CHEMICAL.

1 39. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
2 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
3 during the reasonably foreseeable use of the PRODUCTS.

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

7 41. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
9 and/or ingestion.

10 42. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
11 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
12 accidental participation in the manufacture, distribution and/or offer for sale or use of
13 PRODUCTS to individuals in the State of California.

14 43. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and/or other individuals in the State of California who were or who could become
16 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
17 reasonably foreseeable use of the PRODUCTS.

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

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

26 46. As a consequence of the above-described acts, California Health & Safety Code
27 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
28 DEFENDANTS.

1 47. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
2 hereinafter.

3 **PRAYER FOR RELIEF**

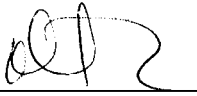
4 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 5 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
6 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
7 alleged herein;
- 8 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
9 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
10 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
11 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the
12 LISTED CHEMICAL;
- 13 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
14 4. That the Court grant such other and further relief as may be just and proper.

15 Respectfully Submitted,

16 Dated: February 20, 2009

HIRST & CHANLER LLP

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18 By:  _____
19 David Lavine
20 Attorneys for Plaintiff
21 ANTHONY E. HELD, Ph.D., P.E.
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