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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 FIELDSTON CLOTHES, INC.; S.
19 ROTHSCHILD & CO., INC.; and DOES 1-
20 150, inclusive,

21 Defendants.

22 Case No. CGC-09-487819

23 **COMPLAINT FOR CIVIL PENALTIES
24 AND INJUNCTIVE RELIEF**

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

26 CASE MANAGEMENT CONCURRENCE SE-

27 SEP 25 2009 - 9:00 AM

28 DEPARTMENT 212

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 vinyl zipper pulls on children’s apparel items 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 and/or on
8 certain vinyl zipper pulls on children’s apparel items that defendants manufacture, distribute
9 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/or on vinyl
11 zipper pulls on children’s apparel items that defendants manufacture, distribute and/or offer for
12 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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to 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.
22 (*27 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 vinyl zipper pulls on children’s
26 apparel items with excessive levels of the LISTED CHEMICAL including, but not limited to, *BZ*
27 *Yellow Jacket, Style: 28373 (#7 26112 20699 3)*. All such children’s vinyl zipper pulls
28 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

1 30. On January 26, 2009, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to FIELDSTON CLOTHES, INC., S. ROTHSCHILD & CO.,
3 INC. and various public enforcement agencies stating that as a result of DEFENDANTS' sales of
4 the PRODUCTS, purchasers and users in the State of California were being exposed to the
5 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,
6 without the individual purchasers and users first having been provided with a "clear and
7 reasonable warning" regarding such toxic exposures ("60-Day Notice of Violation").

8 31. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
9 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
10 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
11 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
12 DEFENDANTS' receipt of plaintiff's 60-Day Notice of Violation. Plaintiff further alleges and
13 believes that such violations will continue to occur into the future.

14 32. After receipt of the claims asserted in the 60-Day Notice of Violation, the
15 appropriate public enforcement agencies have failed to commence and diligently prosecute a
16 cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

1 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
2 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

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

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

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

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

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

23 43. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
24 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 in the amount of \$2,500 per day for each violation alleged
5 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 CHEMICAL;

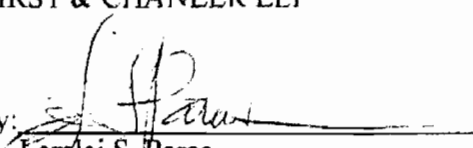
11 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

13 Respectfully Submitted,

14 Dated: April 24, 2009

HIRST & CHANLER LLP

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16 By: 
17 Laralei S. Paras
Attorneys for Plaintiff
18 ANTHONY E. HELD, Ph.D., P.E.