

1 Clifford A. Chanler, State Bar No. 135534
2 Laralei S. Paras, State Bar No. 203319
3 Hirst & Chanler LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

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 5 STAR APPAREL L.L.C.; MECCA 5 STAR;
19 INTERNATIONAL NEWS, INC.; and DOES
20 1-150, inclusive,

21 Defendants.

22 Case No. _____

CGC-09-487817

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

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

26
27 BY FAX.
28

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,
27 *Mecca USA Jacket, Black, MIN908603 (#8 83926 17068 8)*. All such children's vinyl zipper
28 pulls containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

11 **PARTIES**

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

16 12. Defendant 5 STAR APPAREL L.L.C. ("5 STAR") is a person doing business
17 within the meaning of California Health & Safety Code § 25249.11.

18 13. Defendant MECCA 5 STAR ("MECCA") is a person doing business within the
19 meaning of California Health & Safety Code § 25249.11.

20 14. Defendant INTERNATIONAL NEWS, INC. ("INTERNATIONAL NEWS") is a
21 person doing business within the meaning of California Health & Safety Code § 25249.11.

22 15. Defendants 5 STAR, MECCA and INTERNATIONAL NEWS manufacture,
23 distribute, and/or offer the PRODUCTS for sale or use in the State of California or imply by their
24 conduct that they manufacture, distribute and/or offer the PRODUCTS for sale or use in the State
25 of California.

26 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

28 ///

1 17. MANUFACTURER DEFENDANTS engage in the process of research, testing,
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
3 engage in the process of research, testing, designing, assembling, fabricating and/or
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

10 20. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
11 business within the meaning of California Health & Safety Code § 25249.11.

12 21. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
13 of California.

14 22. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences herein
18 alleged. When ascertained, their true names shall be reflected in an amended complaint.

19 23. 5 STAR, MECCA, INTERNATIONAL NEWS, MANUFACTURER
20 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
21 appropriate, collectively be referred to hereinafter as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 24. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
24 Civil Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction,
25 because one or more instances of wrongful conduct occurred, and continues to occur, in the
26 County of San Francisco and/or because DEFENDANTS conducted, and continue to conduct,
27 business in this County with respect to the PRODUCTS.

28 ///

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

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 60-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 60-Day Notice 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 CHEMICAL 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 CHEMICAL.

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

27 ///

28 ///

1 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
3 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 CHEMICAL through dermal contact
6 and/or ingestion.

7 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL 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 CHEMICAL 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 CHEMICAL 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
24 Code § 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.

28 ///

1 PRAAYER 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 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 2, 2009

HIRST & CHANLER LLP

15
16 By: 
17 Laralee S. Paras
18 Attorneys for Plaintiff
19 ANTHONY E. HELD, Ph.D., P.E.
20
21
22
23
24
25
26
27
28