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

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

17 Plaintiff,

18 v.

19 ACME ACCESSORIES, INC.; ALDO U.S.,  
20 INC.; BUENO OF CALIFORNIA, INC.;  
21 COLLECTIVE BRANDS, INC.; FOSSIL,  
22 INC.; HELEN OF TROY L.P.; JONES  
23 APPAREL GROUP, INC.; KMART  
24 CORPORATION; LIMITED BRANDS, INC.;  
25 PHILLIPS-VAN HEUSEN CORPORATION;  
26 STEVEN MADDEN, LTD.; TARGET  
27 CORPORATION; TREBBIANNO, LLC; and  
28 DOES 1-150, inclusive,

Defendants.

Case No. CGC-10-4977~~99~~

**FIRST 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

SEP 02 2010

CLERK OF THE COURT  
BY: MARY ANN MORAN  
Deputy Clerk

**NATURE OF THE ACTION**

1  
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 (“DEHP”), a toxic  
5 chemical found in certain Fashion Accessories sold in California. For purposes of this  
6 Complaint, “Fashion Accessories” shall be defined as: (i) wallets and other coin or bill holders;  
7 (ii) handbags, purses, clutches, and totes; (iii) belts; (iv) footwear; (v) apparel, including gloves  
8 and headwear (and excluding sauna suits); (vi) jewelry; (vii) key holders, keychains, and key  
9 caps; (viii) luggage tags and ID cases; (ix) bag charms and zipper pulls; (x) eyeglass cases; (xi)  
10 coverings/cases for mobile electronic devices (e.g., for telephones, cameras, MP3 players,  
11 CDs/DVDs, and laptops); (xii) coverings for journal/address books; (xiii) cosmetic cases/bags;  
12 and (xiv) toiletry cases/bags. Specifically excluded from the definition of Fashion Accessories  
13 are any and all products that are primarily intended for use by persons ages twelve and younger.

14           2.       By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
15 warn California citizens about their exposure to DEHP present in or on certain Fashion  
16 Accessories that defendants manufacture, distribute and/or offer for sale to consumers  
17 throughout the State of California.

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

23           4.       On October 24, 2003, California identified and listed DEHP as a chemical known  
24 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
25 requirement one year later and was therefore subject to the “clear and reasonable warning”  
26 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal.*  
27 *Health & Safety Code § 25249.8.*)

1 5. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

2 6. Defendants ACME ACCESSORIES, INC., ALDO U.S. INC., BUENO OF  
3 CALIFORNIA, INC., COLLECTIVE BRANDS, INC., FOSSIL, INC., HELEN OF TROY L.P.,  
4 JONES APPAREL GROUP, INC., K MART CORPORATION, LIMITED BRANDS, INC.,  
5 PHILLIPS-VAN HEUSEN CORPORATION, STEVEN MADDEN, LTD., TARGET  
6 CORPORATION, and TREBBIANNO, LLC manufacture, distribute, and/or sell Fashion  
7 Accessories containing the LISTED CHEMICAL as follows:

8 a. Defendant ACME ACCESSORIES, INC. manufactures, distributes,  
9 and/or sells bags/cosmetic cases containing the LISTED CHEMICAL including, but not  
10 limited to, the *Poochy Roll Case, Item #sale-FC614DG*;

11 b. Defendants ALDO U.S., INC. manufactures, distributes, and/or sells  
12 wallets containing the LISTED CHEMICAL, including, but not limited to, the  
13 *Ganglaster, #73495761*;

14 c. Defendant BUENO OF CALIFORNIA, INC. manufactures, distributes,  
15 and/or sells bags/cases for toiletries containing the LISTED CHEMICAL including, but  
16 not limited to, the *Bueno Collection Organizer, #AANM2998, #986FSB (#7 07725 74834*  
17 *6)*;

18 d. Defendant COLLECTIVE BRANDS, INC., manufactures, distributes,  
19 and/or sells footwear containing the LISTED CHEMICAL including, but not limited to,  
20 the *Montego Bay Club Sandals, Peyton, #069458 1633*;

21 e. Defendant FOSSIL, INC. manufactures, distributes, and/or sells wallets  
22 containing the LISTED CHEMICAL including, but not limited to, the *Relic Savannah*  
23 *Checkbook Wallet, RLS5706700 (#7 23765 09721 3)*;

24 f. Defendant HELEN OF TROY L.P. manufactures, distributes, and/or sells  
25 bags/cases for toiletries containing the LISTED CHEMICAL, including, but not limited  
26 to, the *Hot Tools Professional Self-holding Rollers, Style #HT26 (#0 97954 51026 6)*;

1 g. Defendant JONES APPAREL GROUP, INC., manufactures, distributes,  
2 and/or sells footwear containing the LISTED CHEMICAL, including, but not limited to,  
3 the *Bandolino Bdadesina, Pink* (#7 37441 40007 5);

4 h. Defendant KMART CORPORATION manufactures, distributes, and/or  
5 sells bags containing the LISTED CHEMICAL including, but not limited to, the *Disney*  
6 *Pixar The World of Cars 4 Piece Toddler Bed Set, #3370415* (#0 85214 04235 0);

7 i. Defendant LIMITED BRANDS, INC. manufactures, distributes, and/or  
8 sells bags/cases for toiletries containing the LISTED CHEMICAL including, but not  
9 limited to, the *Bath & Body Works Signature Collection Small Cosmetic Bag, P.S. I Love*  
10 *You, #10035893* (#0667523602229);

11 j. Defendant PHILLIPS-VAN HEUSEN CORPORATION manufactures,  
12 distributes, and/or sells wallets containing the LISTED CHEMICAL, including, but not  
13 limited to, the *Bass Wallet, Green, Style #2170* (#4 03093 00028 3);

14 k. Defendant STEVEN MADDEN, LTD. manufactures, distributes, and/or  
15 sells handbags containing the LISTED CHEMICAL including, but not limited to, the  
16 *Betseyville 3 pc Cosmetic Set, Totally In Love, #BC20805* (#7 62670 75711 9);

17 l. Defendant TARGET CORPORATION manufactures, distributes, and/or  
18 sells clutches containing the LISTED CHEMICAL including, but not limited to, the  
19 *Xhilaration Clutch, Yellow, #12068900* (#4 90240 81357 5);

20 m. Defendant TREBBIANNO, LLC manufactures, distributes, and/or sells  
21 handbags containing the LISTED CHEMICAL including, but not limited to, the *White*  
22 *Stag Mini 4Poster Handbag, #AP2AC42UJ8348/3100184* (#6 39470 18003 7); and

23 7. All such Fashion Accessories containing the LISTED CHEMICAL, as listed  
24 above in paragraph 6 shall hereinafter be referred to as the "PRODUCTS."

25 8. Defendants' failure to warn adequately, if at all, a variety of California  
26 consumers, businesses, employees, and other persons not covered by California's Occupational  
27 Safety Health Act, Labor Code Section 6300 *et seq.*, in the state of California about their  
28 exposure to the LISTED CHEMICAL in conjunction with defendants' distribution and sale of

1 the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
2 conduct as well as civil penalties for each violation.

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

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

9 **PARTIES**

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

14 12. Defendant ACME ACCESSORIES, INC. ("ACME") is a person doing business  
15 within the meaning of California Health & Safety Code § 25249.11.

16 13. Defendant ACME manufactures, distributes, and/or offers the PRODUCTS for  
17 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
18 and/or offers the PRODUCTS for sale or use in the State of California.

19 14. Defendant ALDO U.S., INC. ("ALDO U.S.") is a person doing business within  
20 the meaning of California Health & Safety Code § 25249.11.

21 15. Defendant ALDO U.S. manufactures, distributes, and/or offers the PRODUCTS  
22 for sale or use in the State of California or implies by its conduct that it manufactures,  
23 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

24 16. Defendant BUENO OF CALIFORNIA, INC. ("BUENO") is a person doing  
25 business within the meaning of California Health & Safety Code § 25249.11.

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

1           18. Defendant COLLECTIVE BRANDS, INC. ("COLLECTIVE BRANDS") is a  
2 person doing business within the meaning of California Health & Safety Code § 25249.11.

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

6           20. Defendant FOSSIL, INC. ("FOSSIL") is a person doing business within the  
7 meaning of California Health & Safety Code § 25249.11.

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

11           22. Defendant HELEN OF TROY L.P. ("HELEN L.P.") is a person doing business  
12 within the meaning of California Health & Safety Code § 25249.11.

13           23. Defendant HELEN L.P. manufactures, distributes, and/or offers the PRODUCTS  
14 for sale or use in the State of California or implies by its conduct that it manufactures,  
15 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

16           24. Defendant JONES APPAREL GROUP, INC. ("JONES") is a person doing  
17 business within the meaning of California Health & Safety Code § 25249.11.

18           25. Defendant JONES manufactures, distributes, and/or offers the PRODUCTS for  
19 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
20 and/or offers the PRODUCTS for sale or use in the State of California.

21           26. Defendant KMART CORPORATION ("KMART") is a person doing business  
22 within the meaning of California Health & Safety Code § 25249.11.

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

26           28. Defendant LIMITED BRANDS, INC. ("LIMITED") is a person doing business  
27 within the meaning of California Health & Safety Code § 25249.11.

28

1           29. Defendant LIMITED manufactures, distributes, and/or offers the PRODUCTS for  
2 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
3 and/or offers the PRODUCTS for sale or use in the State of California.

4           30. Defendant PHILLIPS-VAN HEUSEN CORPORATION (“PHILLIPS”) is a  
5 person doing business within the meaning of California Health & Safety Code § 25249.11.

6           31. Defendant PHILLIPS manufactures, distributes, and/or offers the PRODUCTS for  
7 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
8 and/or offers the PRODUCTS for sale or use in the State of California.

9           32. Defendant STEVEN MADDEN, LTD. (“STEVEN MADDEN”) is a person doing  
10 business within the meaning of California Health & Safety Code § 25249.11.

11           33. Defendant STEVEN MADDEN manufactures, distributes, and/or offers the  
12 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
13 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

14           34. Defendant TARGET CORPORATION (“TARGET”) is a person doing business  
15 within the meaning of California Health & Safety Code § 25249.11.

16           35. Defendant TARGET manufactures, distributes, and/or offers the PRODUCTS for  
17 sale or use in the State of California or implies by its conduct that it manufactures, distributes,  
18 and/or offers the PRODUCTS for sale or use in the State of California.

19           36. Defendant TREBBIANNO, LLC (“TREBBIANNO”) is a person doing business  
20 within the meaning of California Health & Safety Code § 25249.11.

21           37. Defendant TREBBIANNO manufactures, distributes, and/or offers the  
22 PRODUCTS for sale or use in the State of California or implies by its conduct that it  
23 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

26           39. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
28

1 engage in the process of research, testing, designing, assembling, fabricating and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 40. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

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

8 42. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing  
9 business within the meaning of California Health & Safety Code § 25249.11.

10 43. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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

17 45. ACME, ALDO U.S., BUENO, COLLECTIVE BRANDS, FOSSIL, HELEN L.P.,  
18 JONES, KMART, LIMITED, PHILLIPS, STEVEN MADDEN, TARGET, TREBBIANNO,  
19 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL  
20 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as  
21 "DEFENDANTS."

#### 22 VENUE AND JURISDICTION

23 46. 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.





1 handbags, and wallets, without the individual purchasers and users first having been provided  
2 with a “clear and reasonable warning” regarding such toxic exposures.

3 53. On or about February 12, 2010, sixty-day notices of violation, together with the  
4 requisite certificates of merit, were provided to COLLECTIVE BRANDS, PHILLIPS, and  
5 various public enforcement agencies stating that as a result of the COLLECTIVE BRANDS and  
6 PHILLIPS’ sales of certain wallets and/or footwear purchasers and users in the State of  
7 California were being exposed to DEHP resulting from the reasonably foreseeable uses of certain  
8 wallets and footwear, without the individual purchasers and users first having been provided with  
9 a “clear and reasonable warning” regarding such toxic exposures.

10 54. On or about March 19, 2010, sixty-day notices of violation, together with the  
11 requisite certificates of merit, were provided to HELEN L.P., JONES, KMART and various  
12 public enforcement agencies stating that as a result of the HELEN L.P., JONES and KMART’s  
13 sales of certain bags/cosmetic cases, bags/cases for toiletries and/or footwear, purchasers and  
14 users in the State of California were being exposed to DEHP resulting from the reasonably  
15 foreseeable uses of certain bags/cosmetic cases, bags/cases for toiletries and/or footwear, without  
16 the individual purchasers and users first having been provided with a “clear and reasonable  
17 warning” regarding such toxic exposures.

18 55. On or about June 3, 2010, a sixty-day notice of violation, together with the  
19 requisite certificate of merit, was provided to LIMITED and various public enforcement agencies  
20 stating that as a result of LIMITED’s sales of certain bags/cases for toiletries, purchasers and  
21 users in the State of California were being exposed to DEHP resulting from the reasonably  
22 foreseeable uses of certain bags/cases for toiletries without the individual purchasers and users  
23 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

24 56. On or about June 17, 2010, sixty-day notices of violation, together with the  
25 requisite certificates of merit, were provided to BUENO, STEVEN MADDEN, and various  
26 public enforcement agencies stating that as a result of BUENO and STEVEN MADDEN’s sales  
27 of certain handbags and bags/cases for toiletries, purchasers and users in the State of California  
28 were being exposed to DEHP resulting from the reasonably foreseeable uses of certain handbags

1 and bags/cases for toiletries without the individual purchasers and users first having been  
2 provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

12 59. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
14 limits.

15 60. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the  
17 LISTED CHEMICAL.

18 61. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
19 to expose individuals to the LISTED CHEMICAL through dermal contact, inhalation, and/or  
20 ingestion during the reasonably foreseeable use of the PRODUCTS.

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

24 63. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,  
26 inhalation, and/or ingestion.

27 64. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offer for sale or use of  
2 PRODUCTS to individuals in the State of California.

3 65. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
4 consumers and/or other individuals in the State of California who were or who could become  
5 exposed to the LISTED CHEMICAL through dermal contact, inhalation, and/or ingestion during  
6 the reasonably foreseeable use of the PRODUCTS.

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

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

16 68. As a consequence of the above-described acts, California Health & Safety Code  
17 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
18 DEFENDANTS.

19 **PRAYER FOR RELIEF**

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

21 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
22 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged  
23 herein;

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

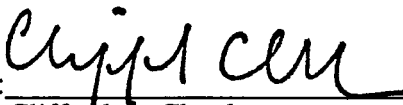
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

Dated: September 2, 2010

THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.