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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. M. [Signature]

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE CITY AND COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 THE YANKEE CANDLE COMPANY, INC.
19 and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV1004743

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 tote bags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to DEHP, present in or on certain tote bags that
8 defendants manufacture, import, distribute, and/or offer for sale to consumers throughout the
9 State of California.

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

15 4. On October 23, 2003, California identified and listed DEHP as a chemical known
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable warning”
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code § 25249.8.*) DEHP shall be referred to hereinafter as the “LISTED
20 CHEMICAL.”

21 5. Defendants manufacture, import, distribute, and/or sell tote bags containing the
22 LISTED CHEMICAL including, but not limited to, *PWP-09 Fall Tote # 1168259 (#4 09032 69*
23 *889 4)*. All such tote bags containing the LISTED CHEMICAL shall hereinafter be referred to
24 as the “PRODUCT[S].”

25 6. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
27 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
28 of such conduct as well as civil penalties for each such violation.

1 in the State of California.

2 16. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are persons doing
3 business within the meaning of California Health & Safety Code § 25249.11.

4 17. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
5 State of California.

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

11 19. YANKEE CANDLE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
12 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
13 referred to hereinafter as “DEFENDANTS.”

14 **VENUE AND JURISDICTION**

15 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
16 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because
17 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
18 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
19 County with respect to the PRODUCTS.

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

24 22. The California Superior Court has jurisdiction over DEFENDANTS based on
25 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
26 association that is a citizen of the State of California, has sufficient minimum contacts in the
27 State of California, or otherwise purposefully avails itself of the California market.

28

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 - Against All Defendants)**

5 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
6 Paragraphs 1 through 22, inclusive.

7 24. The citizens of the State of California have expressly stated in the Safe Drinking
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*
9 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,
10 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

15 26. On February 12, 2010, a sixty-day notice of violation, together with the requisite
16 certificate of merit, was provided to YANKEE CANDLE, and various public enforcement
17 agencies stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
18 and users in the State of California were being exposed to DEHP resulting from the reasonably
19 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
20 been provided with a “clear and reasonable warning” regarding such toxic exposures.

21 27. DEFENDANTS have engaged in the manufacture, importation, distribution,
22 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
23 Code § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
25 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.
26 Plaintiff further alleges and believes that such violations will continue to occur into the future.

27 28. After receipt of the claims asserted in the sixty-day notice of violation, the
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against DEFENDANTS under Proposition 65.

2 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
3 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
4 limits.

5 30. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
6 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
7 LISTED CHEMICAL.

8 31. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
9 to expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
10 inhalation during the reasonably foreseeable use of the PRODUCTS.

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

14 33. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
15 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
16 ingestion, and/or inhalation.

17 34. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
18 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
19 accidental participation in the manufacture, importation, distribution, and/or offering of the
20 PRODUCTS for sale or use to individuals in the State of California.

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

25 36. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
26 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
27 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable use of the
28 PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning” have suffered,

1 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
2 remedy at law.

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

6 38. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) further specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

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

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

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

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

21 Respectfully Submitted,

22 Dated: September 8, 2010

THE CHANLER GROUP

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24 By: 
25 Clifford A. Chanler
26 Attorneys for Plaintiff
27 ANTHONY E. HELD, PH.D., P.E.
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