

(ENDORSED)
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Clerk of the Superior Court
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DEPUTY CLERK

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SAN MATEO
14 UNLIMITED CIVIL JURISDICTION

CIV 496247

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

16 Plaintiff,

17 v.

18 CHARMANT INC.; LUXOTTICA USA,
19 INC.; and BURLINGTON COAT FACTORY
20 WAREHOUSE CORPORATION; and DOES
21 1-150, inclusive,

22 Defendants.

Case No. _____

**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 eyewear cases 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 eyewear cases
8 that defendants manufacture, distribute and/or offer for sale to consumers throughout the State
9 of California.

10 3. High levels of DEHP are commonly found in and on eyewear cases that
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 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 23, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the warning
20 requirement one year later and was therefore subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*
22 *Health & Safety Code § 25249.8.*) DEHP shall be referred to hereinafter as the “LISTED
23 CHEMICAL.”

24 6. Defendants manufacture, distribute, and/or sell eyewear cases containing
25 excessive levels of the LISTED CHEMICAL including, but not limited to, *Eyewear Case with*
26 *Sunglasses, Style: PUMA, #30599, #809-29271810.* All such eyewear cases containing the
27 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”
28

1 15. Defendant BURLINGTON COAT FACTORY WAREHOUSE CORPORATION
2 (“BURLINGTON COAT FACTORY”) is a person doing business within the meaning of
3 California Health & Safety Code § 25249.11.

4 16. Defendant BURLINGTON COAT FACTORY manufactures, distributes, and/or
5 offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it
6 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
7 California.

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

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

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

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

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

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

23 23. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
25 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
26 each of the fictitiously named defendants is responsible for the acts and occurrences herein
27 alleged. When ascertained, their true names shall be reflected in an amended complaint.
28

1 30. Proposition 65 states, “No person in the course of doing business shall knowingly
2 and intentionally expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such individual...”

4 (*Id.*)

5 31. On April 9, 2010, a sixty-day notice of violation, together with the requisite
6 certificate of merit, was provided to CHARMANT, LUXOTTICA, BURLINGTON COAT
7 FACTORY and various public enforcement agencies stating that as a result of the
8 DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California were
9 being exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS,
10 without the individual purchasers and users first having been provided with a “clear and
11 reasonable warning” regarding such toxic exposures.

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

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

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

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

1 36. 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 37. 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
6 defined by 27 CCR § 25602(b).

7 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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.

