

FILED

FEB 09 2011

KIM TURNER
Clerk of the Court
MARIN COUNTY SUPERIOR COURT
1000 S. GARDEN ST., SUITE 200
SAN RAFAEL, CA 94903

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8 RUSSELL BRIMER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD, PH.D., P.E.; and
14 RUSSELL BRIMER

15 Plaintiffs,

16 v.

17 PACIFIC CONNECTIONS, INC.; JO-ANN
18 STORES, INC.; and DOES 1-150, inclusive,

19 Defendants.

) Case No. CIV 1003621

) **FIRST AMENDED COMPLAINT FOR**
) **CIVIL PENALTIES AND INJUNCTIVE**
) **RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs, ANTHONY E.
3 HELD, PH.D., P.E., and RUSSELL BRIMER, in the public interest of the citizens of the State
4 of California, to enforce the People’s right to be informed of the presence of lead and di(2-
5 ethylhexyl)phthalate (“DEHP”), toxic chemicals found in vinyl handbags and handbag handles
6 sold in California.

7 2. By this Complaint, plaintiffs seek to remedy defendants’ continuing failures to
8 warn California citizens about their exposure to lead and DEHP, present in or on certain
9 handbag handles and vinyl handbags that defendants manufacture, distribute, sell, and/or offer
10 for sale to consumers throughout the State of California.

11 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
13 course of doing business shall knowingly and intentionally expose any individual to a chemical
14 known to the state to cause cancer or reproductive toxicity without first giving clear and
15 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

16 4. On February 27, 1987, California identified and listed lead as a chemical known
17 to cause birth defects and other reproductive harm. Lead became subject the “clear and
18 reasonable warning” requirements of Proposition 65 one year later on February 27, 1988. (27
19 *CCR § 27001 (c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).*)

20 5. On October 24, 2003, California identified and listed DEHP as a chemical known
21 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
22 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (27
23 *CCR § 27001(c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).*)

24 6. Lead and DEHP shall be referred to collectively hereinafter as the “LISTED
25 CHEMICALS.”

26 7. Defendants manufacture, distribute, and/or sell handbag handles that contain lead
27 and DEHP, including, but not limited to, the *Purse-n-alize-it! Handbag Handles, OBT128 (#7*
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1 33804 12269) and vinyl handbags that contain DEHP, including, but not limited to, the *Pacific*
2 *Connections Designs Handbag* (#7 33804 15998 7). All such handbag handles containing lead
3 and DEHP and vinyl handbags containing DEHP shall hereinafter be collectively referred to as
4 the "PRODUCTS."

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

9 9. For defendants' violations of Proposition 65, plaintiffs seek preliminary injunctive
10 and permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards caused by exposures to the
12 LISTED CHEMICALS. (*Cal. Health & Safety Code § 25249.7(a).*)

13 10. Plaintiffs also seek civil penalties against defendants for their violations of
14 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

15 PARTIES

16 11. Plaintiff ANTHONY E. HELD, PH.D., P.E. ("Held") is a citizen of the State of
17 California who is dedicated to protecting the health of California citizens through the
18 elimination or reduction of toxic exposures from consumer and commercial products, and brings
19 this action in the public interest pursuant to California Health & Safety Code § 25249.7.

20 12. Plaintiff RUSSELL BRIMER, ("Brimer") is a citizen of the State of California
21 who is dedicated to protecting the health of California citizens through the elimination or
22 reduction of toxic exposures from consumer products, and brings this action in the public
23 interest pursuant to California Health & Safety Code § 25249.7.

24 13. PACIFIC CONNECTIONS, INC. ("Pacific Connections"), is a person doing
25 business within the meaning of California Health & Safety Code § 25249.11.

26 14. Pacific Connections manufactures, distributes, and sells and/or offers the
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it
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1 manufactures, distributes, sells and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 15. JO-ANN STORES, INC. (“Jo-Ann”), is a person doing business within the
4 meaning of California Health & Safety Code § 25249.11.

5 16. Jo-Ann manufactures, distributes, sells, and/or offers the PRODUCTS for sale or
6 use in the State of California or implies by its conduct that it manufactures, distributes, sells
7 and/or offers the PRODUCTS for sale or use in the State of 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 (“RETAILER DEFENDANTS”) are each persons
20 doing business within the meaning of California Health & Safety Code § 25249.11.

21 22. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale to
22 individuals in the State of California.

23 23. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiffs, who therefore sue said defendants by their fictitious name pursuant to
25 California Code of Civil Procedure § 474. Plaintiffs are informed and believe, and on that basis
26 allege, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 herein alleged. When ascertained, their true names shall be reflected in an amended complaint.
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1 30. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual....” (*Ibid.*)

5 31. On July 17, 2009, Brimer issued a sixty-day notice of violation which, together
6 with the requisite Certificate of Merit, was provided to Pacific Connections, Jo-Ann, and
7 various public enforcement agencies stating that as a result of the DEFENDANTS’ sales of
8 certain handbag handles, purchasers and users in the State of California were being exposed to
9 lead resulting from the reasonably foreseeable use thereof, without the individual purchasers
10 and users first having been provided with a “clear and reasonable warning” regarding such toxic
11 exposures.

12 32. On May 7, 2010, Brimer issued another sixty-day notice of violation, together
13 with the requisite Certificate of Merit, to Pacific Connections and various public enforcement
14 agencies stating that as a result of the Pacific Connections’ sales of certain handbags,
15 purchasers and users in the State of California were being exposed to DEHP resulting from the
16 reasonably foreseeable use thereof, without the individual purchasers and users first having been
17 provided with a “clear and reasonable warning” regarding such toxic exposures.

18 33. On October 29, 2010, Held issued a sixty-day notice of violation, together with
19 the requisite Certificate of Merit, to Pacific Connections, Jo-Ann, and various public
20 enforcement agencies stating that as a result of the DEFENDANTS’ sales of certain handbag
21 handles, purchasers and users in the State of California were being exposed to DEHP resulting
22 from the reasonably foreseeable use thereof, without the individual purchasers and users first
23 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

24 34. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
26 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
27 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
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1 DEFENDANTS' receipt of Plaintiffs' sixty-day notices of violation. Plaintiffs further allege
2 and believe that such violations will continue to occur into the future.

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

6 36. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICALS in amounts above the
8 allowable state limits.

9 37. DEFENDANTS knew or should have known that the PRODUCTS that they
10 manufactured, distributed, and/or offered for sale or use in California contained the LISTED
11 CHEMICALS.

12 38. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
13 as to expose individuals to the LISTED CHEMICALS through dermal contact and/or ingestion
14 during the reasonably foreseeable use of the PRODUCTS.

15 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
16 continues to cause, consumer and occupational exposures to the LISTED CHEMICALS, as
17 such exposure is defined by 27 CCR § 25602(b).

18 40. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal
20 contact and/or ingestion.

21 41. DEFENDANTS intended that such exposures to the LISTED CHEMICALS from
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
23 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
24 sale or use to individuals in the State of California.

25 42. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
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1 exposed to the LISTED CHEMICALS through dermal contact and/or ingestion during the
2 reasonably foreseeable use of the PRODUCTS.

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

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

11 45. As a consequence of the above-described acts, California Health & Safety Code
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiffs pray for judgment against DEFENDANTS as follows:

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

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

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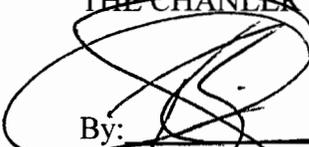
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- 1 3. That the Court grant Plaintiffs their reasonable attorneys' fees and costs of suit;
2 and
3 4. That the Court grant such other and further relief as may be just and proper.
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6 Dated: February 9, 2011

Respectfully Submitted,

7 THE CHANLER GROUP

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9 By: 

10 Brian C. Johnson
11 Attorneys for Plaintiffs
12 ANTHONY E. HELD, PH.D., P.E. and
13 RUSSEL BRIMER
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