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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 ZAPPOS.COM, INC.;
20 AMAZON.COM, INC.; and DOES 1-150,
21 inclusive,

22 Defendants.

Case No. GG15560460 ~~73~~ *Jul*

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

RG15560460

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY HELD,
3 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 footwear 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 footwear that
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
9 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 Cal. Code Regs., § 27001
19 (c); Cal. Health & Safety Code § 25249.8.)

20 5. DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

21 6. Defendants manufacture, distribute, and/or sell footwear containing excessive
22 levels of the LISTED CHEMICAL including, but not limited to, the *Sensi Ibiza, Black w/Vapor,*
23 *#5220 (#7 94735 03993 9).*

24 7. All such footwear containing the LISTED CHEMICAL shall hereinafter be
25 referred to as the “PRODUCTS.”

26 8. Defendants’ failure to warn consumers and/or other individuals in the State of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
28

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

3 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 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 by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 11. Plaintiff ANTHONY 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
13 interest pursuant to California Health & Safety Code § 25249.7.

14 12. Defendants ZAPPOS.COM, INC. ("ZAPPOS") and AMAZON.COM, INC.
15 ("AMAZON") are each persons doing business within the meaning of California Health &
16 Safety Code § 25249.11.

17 13. Defendants ZAPPOS and AMAZON manufacture, distribute, and/or offer the
18 PRODUCTS for sale or use in the State of California, or imply by their conduct that they
19 manufacture, distribute, and/or offer the PRODUCTS for sale or use in the State of California.

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

22 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

28

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

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

6 19. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 State of California.

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

13 21. ZAPPOS, AMAZON, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be
15 referred to as “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

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

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

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

1 State of California, or otherwise purposefully avails itself of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
3 California courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the State of California have expressly stated in Proposition 65 that
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6*.)

11 27. Proposition 65 states, "[n]o person in the course of doing business shall
12 knowingly and intentionally expose any individual to a chemical known to the state to cause
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such
14 individual...." (*Ibid.*)

15 28. On or about October 15, 2010, a sixty-day notice of violation ("60-Day Notice"),
16 together with the requisite certificate of merit, was provided to ZAPPOS, AMAZON and
17 various public enforcement agencies stating that, as a result of the DEFENDANTS' sales of the
18 PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED
19 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
20 individual purchasers and users first having been provided with a "clear and reasonable
21 warning" regarding such toxic exposures.

22 29. DEFENDANTS have engaged in the manufacture, importation, distribution,
23 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
24 Code § 25249.6 and DEFENDANTS' manufacture, importation, distribution, and/or offering of
25 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
26 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff
27 further alleges and believes that such violations will continue to occur into the future.
28

1 30. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action
3 against DEFENDANTS under Proposition 65.

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

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

10 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
12 during the reasonably foreseeable use of the PRODUCTS.

13 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is
15 defined by 27 California Code of Regulations (“CCR”) section 25602(b).

16 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

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

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

27 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
2 by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to
3 suffer, irreparable harm for which harm they have no plain, speedy, or adequate remedy at law.

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

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

10 **PRAYER FOR RELIEF**

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

- 12 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;
- 15 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing,
17 importing, and/or offering the PRODUCTS for sale or use in California, without providing
18 "clear and reasonable warnings" as defined by 27 CCR § 25601, as to the harms associated with
19 exposures to the LISTED CHEMICAL;
- 20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: February 1, 2010

23 Respectfully Submitted,
24 THE CHANLER GROUP

25
26 By: 

27 Brian Johnson
28 Attorneys for Plaintiff
ANTHONY HELD, Ph.D., P.E.