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FILED

MAR 08 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.,)

13 Plaintiff,)

14 v.)

15 FASHION EXPRESS, INC.; and DOES 1-)
16 150, inclusive,)

17 Defendants.)

Case No. CIV 110 1220

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA FAX

1 **NATURE OF THE ACTION**

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 handbags sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain handbags that
8 defendant manufactures, imports, distributes, 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.*)

20 5. Defendant FASHION EXPRESS, INC. ("FASHION EXPRESS or defendant")
21 manufactures, imports, distributes, and/or sells handbags containing DEHP including, but not
22 limited to, *Piper & Blue Neon Crossbody LHK1004, KSN: 0-01947466-7 (#6 33394 59819 0).*

23 6. All such handbags containing DEHP, shall hereinafter be collectively referred to as
24 the "PRODUCTS."

25 7. Defendant's failure to warn consumers and/or other individuals in the State of
26 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP in conjunction with defendant's distribution, importation,
28

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

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

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

9 **PARTIES**

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

14 11. FASHION EXPRESS is a person doing business within the meaning of California
15 Health & Safety Code § 25249.11.

16 12. FASHION EXPRESS manufactures, imports, distributes, and/or offer the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it
18 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

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

22 14. 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, e.g., by engaging in private labeling one or more of the PRODUCTS for sale or
26 use in the State of California.

1 continued to occur beyond FASHION EXPRESS's receipt of plaintiff's sixty-day notice of
2 violation. Plaintiff further alleges and believes that such violations will continue to occur into
3 the future.

4 29. After receipt of the claims asserted in the October 29, 2010 sixty-day notice of
5 violation, the appropriate public enforcement agencies have failed to commence and diligently
6 prosecute a cause of action against DEFENDANTS under Proposition 65.

7 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
8 use in California by DEFENDANTS contained DEHP above the allowable state limits.

9 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
11 DEHP.

12 32. DEHP was present in or on the PRODUCTS in such a way as to expose
13 individuals to DEHP through dermal contact and ingestion during the reasonably foreseeable use
14 of the PRODUCTS.

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
17 27 California Code of Regulations ("CCR") § 25602(b).

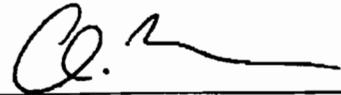
18 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to DEHP through dermal contact and ingestion.

20 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
22 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to
23 individuals in the State of California.

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

1 Dated: March 8, 2011

2 Respectfully Submitted,
3 THE CHANLER GROUP

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5 By: 
6 Christopher Martin
7 Attorneys for Plaintiff
8 ANTHONY E. HELD, PH.D., P.E.

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