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FILED

DEC 21 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

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

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

Plaintiff,

v.

Y & Z WORLD DEVELOPMENT INC.; and
DOES 1-150, inclusive,

Defendants.

) Case No. CIV 1106221

) **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 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 apparel sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failures to
7 warn California citizens about their exposure to DEHP, present in or on certain apparel that
8 defendant manufactures, distributes, and/or offers 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 24, 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 24, 2004. (*27 CCR § 27001(c); Cal.*
19 *Health & Safety Code § 25249.8.*)

20 5. Defendant Y & Z WORLD DEVELOPMENT INC. ("Y & Z" or "Defendant")
21 manufactures, distributes, and/or sells apparel containing DEHP including, but not limited to, the
22 *WDNY Coat, Cranberry, Style 15737.*

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

25 7. Defendant's failures to warn consumers and/or other individuals in the state of
26 California about their exposure to DEHP in conjunction with Defendant's sale of the
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1 PRODUCTS is a violation of Proposition 65 and subjects Defendant to enjoinder of such
2 conduct as well as civil penalties for each such violation.

3 8. For Defendant's violations of Proposition 65, plaintiff seeks preliminary
4 injunctive and permanent injunctive relief to compel Defendant to provide purchasers or users of
5 the 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 its violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

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

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

16 12. Y & Z manufactures, distributes, and/or offers the PRODUCTS for sale or use in
17 the state of California or implies by its conduct that it manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the state of California.

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

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

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

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1 association that either are citizens of the state of California, have sufficient minimum contacts in
2 the state of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 23, inclusive.

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

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

16 27. On December 21, 2010, a 60-Day Notice of Violation, together with the requisite
17 Certificate of Merit ("Notice"), was provided to Y & Z and various public enforcement agencies
18 stating that as a result of DEFENDANTS' manufacture, distribution and/or sale of the
19 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
20 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
21 purchasers and users first having been provided with a "clear and reasonable warning" regarding
22 such toxic exposures.

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

3 29. After receipt of the claims asserted in the Notice, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

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

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

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

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

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

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

23 36. 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 DEHP through dermal contact and ingestion during the reasonably foreseeable use of
26 the PRODUCTS.

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

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

9 39. As a consequence of the above-described acts, California Health & Safety Code
10 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

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

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

17 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
18 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
19 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
20 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;
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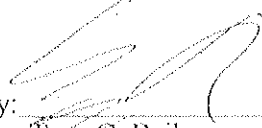
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 21, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 
Troy C. Bailey
Attorney for Plaintiff
ANTHONY E. HELD, PH.D., P.E.