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SAN FRANCISCO COUNTY
SUPERIOR COURT

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BY: _____
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1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 203
5 Mill Valley, CA 94941
6 Telephone: (415) 388-1128
7 Facsimile: (415) 388-1135

8 Attorneys for Plaintiff
9 ANTHONY E. HELD, Ph.D., P.E.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 ALLSTAR MARKETING GROUP, LLC; and
17 DOES 1-150, inclusive,

18 Defendants.

Case No. **CGC-11-510332**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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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, a toxic chemical
5 found in cases for mobile electronic devices sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
7 warn California citizens about their exposure to di(2-ethylhexyl)phthalate, present in or on
8 certain cases for mobile electronic devices that defendants manufacture, distribute, and/or offer
9 for sale to consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on cases for
11 mobile electronic devices that defendants manufacture, distribute, and/or offer for sale to
12 consumers throughout the State of 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
15 of doing business shall knowingly and intentionally expose any individual to a chemical known
16 to 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 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as
19 a chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the “clear
21 and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (27
22 *CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell cases for mobile electronic devices
26 containing excessive levels of the LISTED CHEMICAL including, but not limited to, the *Design*
27 *by Buxton Cell Phone Wallet, Model #BX131124 (#7 40275 00230 8)*. All such cases for mobile
28

1 electronic devices containing the LISTED CHEMICAL shall hereinafter be referred to as the
2 “PRODUCTS.”

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

7 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers or users of the
9 PRODUCTS with the required warning regarding the health hazards of the LISTED
10 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

11 10. Plaintiff also seeks civil penalties against defendants for their violations of
12 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

13 **PARTIES**

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

18 12. Defendant ALLSTAR MARKETING GROUP, LLC (“ALLSTAR”) is a person
19 doing business within the meaning of California Health & Safety Code § 25249.11.

20 13. Defendant ALLSTAR manufactures, distributes, and/or offers the PRODUCTS
21 for sale or use in the State of California or implies by its conduct that it manufactures,
22 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

3 30. After receipt of the claims asserted in the sixty-day notice 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 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

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

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

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

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

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

25 37. 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
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
28 reasonably foreseeable use of the PRODUCTS.

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4. That the Court grant such other and further relief as may be just and proper.

Respectfully Submitted,

Dated: April 19, 2011

THE CHANLER GROUP

By: Laurence D. Haveson
Laurence D. Haveson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.