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FILED

MAR 13 2012

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

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

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

16 Plaintiff,

17 v.

18 MAGGY LONDON INTERNATIONAL,
19 LTD.; and DOES 1-150, inclusive,

20 Defendants.

Case No. CIV **120 12 22**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY 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 belts sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP
8 present in or on certain belts that defendants manufacture, import, distribute, and/or offer for
9 sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the belts that defendants
11 manufacture, distribute, and/or offer for sale to consumers throughout the state of California.

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

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

22 6. Defendants manufacture, distribute, and/or offer sale of belts containing excessive
23 levels of DEHP including, but not limited to, *London Times Dress with Belt, LT7740 (#7 21547*
24 *29297 9)*. All such belts containing DEHP shall hereinafter be referred to as the "PRODUCTS."

25 7. Defendants' 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 and its potential to cause birth defects and other reproductive
28 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of

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

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendants 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 defendants for their violations of
8 Proposition 65, as provided 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; he brings this action in the public interest
13 pursuant to California Health & Safety Code § 25249.7(d).

14 11. Defendant MAGGY LONDON INTERNATIONAL, LTD. ("MAGGY
15 LONDON") is a person in the course of doing business within the meaning of California Health
16 & Safety Code § 25249.11.

17 12. Defendant MAGGY LONDON manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of
20 California.

21 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
22 persons in the course of doing business within the meaning of California Health & Safety Code
23 § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of researching,
25 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
26 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
27 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.
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1 in all causes except those given by statute to other trial courts.” The statute under which this
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
5 or association that is a citizen of the state of California, has sufficient minimum contacts in the
6 state of California, or otherwise purposefully avails itself of the California market.

7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

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

13 25. The citizens of the state of California have expressly stated in the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

17 26. Proposition 65 states, “[n]o person in the course of doing business shall
18 knowingly and intentionally expose any individual to a chemical known to the state to cause
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such
20 individual....” (*Ibid.*)

21 27. On or about April 8, 2011, a sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to MAGGY LONDON and various public
23 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS,
24 purchasers and users in the state of California were being exposed to DEHP resulting from the
25 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
26 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and

1 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use
2 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
3 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
4 believes that such violations will continue to occur into the future.

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

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

10 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
11 distributed, and/or offered for sale or use in California contained 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/or ingestion during the reasonably foreseeable
14 use of the PRODUCTS.

15 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
16 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
17 § 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/or 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, distribution, and/or offering of the PRODUCTS for sale or use 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/or ingestion during the reasonably foreseeable
27 use of the PRODUCTS.

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