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ALAMEDA COUNTY

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

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

Plaintiff,

v.

LARRY HANSEL CLOTHING, LLC, and
DOES 1-150, inclusive,

Defendants.

Case No. R 0 1 1 5 8 0 5 6 8

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, a toxic chemical
5 found in belts 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 belts that defendant manufactures, distributes, and/or offers for sale to consumers
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on belts that
11 defendant manufactures, distributes, and/or offers for sale to consumers throughout the State of
12 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. Defendant manufactures, distributes, and/or sells belts containing excessive levels
26 of the LISTED CHEMICAL including, but not limited to, the *Love Tease Clothing Dress with*
27 *Belt, Style #1R59MAAK (#7 92310 23587 5)*. All such belts containing the LISTED
28 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

1 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
2 DEFENDANTS' receipt of plaintiff's sixty-day notices of violation. Plaintiff further alleges and
3 believes that such violations will continue to occur into the future.

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

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

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

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

16 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
17 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
18 by 27 CCR § 25602(b).

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

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

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

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

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

11 40. As a consequence of the above-described acts, California Health & Safety Code
12 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

19 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
20 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
21 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
22 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to each of
23 the LISTED CHEMICAL;

24 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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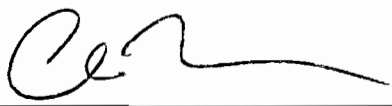
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4. That the Court grant such other and further relief as may be just and proper.

Dated: June 14, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 
Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.,