

1 Josh Voorhees, State Bar No. 241436
2 Rachel Doughty, State Bar No. 255904
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2011

CLERK OF THE SUPERIOR COURT

By **E. Robinson** Deputy

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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; BIG
STRIKE, INC.; CHARLOTTE RUSSE, INC.;
CHARLOTTE RUSSE HOLDING, INC.;
JODI KRISTOPHER, INC.; ROGER
GARMENTS INC.; TANTRUM APPAREL,
LLC; TRIXXI CLOTHING COMPANY,
INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG11580568

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

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, a toxic chemical
5 found in belts and handbags 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 and handbags that defendants manufacture, distribute, and/or offer for sale to
9 consumers throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and on belts and
11 handbags that defendants manufacture, distribute, and/or offer for sale to consumers throughout
12 the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”), “No person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual. . . .” (*Health & Saf. 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 *Cal. Code Regs., § 27001(c); Cal. Health & Saf. 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 belts and handbags containing the
26 LISTED CHEMICAL as follows:
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1 a. Defendant BIG STRIKE, INC. manufactures, distributes, and/or sells belts
2 containing the LISTED CHEMICAL including, but not limited to the *Heart and Soul*
3 *Shirt and Belt Set, Style # 72511TRK (#6 13204 07935 4);*

4 b. Defendants CHARLOTTE RUSSE, INC. and CHARLOTTE RUSSE
5 HOLDING, INC. manufacture, distribute, and/or sell handbags containing the LISTED
6 CHEMICAL including, but not limited to the *Quilted PU Satchel, #301066695,*
7 *JP05127NSBLK-WH;*

8 c. Defendant JODI KRISTOPHER, INC. manufactures, distributes, and/or
9 sells belts containing the LISTED CHEMICAL including, but not limited to the *L8TER*
10 *Dress with Belt, Style #CPN53002A,* and the *City Triangles Junior Dress, Style: 9302-*
11 *X948;*

12 d. Defendant LARRY HANSEL CLOTHING, LLC. manufactures,
13 distributes, and/or sells belts containing the LISTED CHEMICAL including, but not
14 limited to the *Love Tease Clothing Dress with Belt, Style #1R59MAAK (#7 92310 23587*
15 *5);*

16 e. Defendant ROGER GARMENTS INC. manufactures, distributes, and/or
17 sells belts containing the LISTED CHEMICAL including, but not limited to the *Sooshy*
18 *Skirt with Belt, Style S30828-03 (#8 45439 01800 0);*

19 f. Defendant TANTRUM APPAREL, LLC manufactures, distributes, and/or
20 sells belts containing the LISTED CHEMICAL including, but not limited to the *L8TER*
21 *Dress with Belt, Style #CPN53002A;* and

22 g. Defendant TRIXXI CLOTHING COMPANY, INC. manufactures,
23 distributes, and/or sells belts containing the LISTED CHEMICAL including, but not
24 limited to the *Trixxi Top with Belt, #1130990U3X, #640-4409 (#8 89387 37419 1).*

25 8. All such belts and handbags containing the LISTED CHEMICAL listed above in
26 paragraph 7(a) – (g) shall hereinafter be referred to as the “PRODUCTS.”

27 9. Defendants’ failure to warn consumers and/or other individuals in the State of
28 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sale

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

3 10. 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 the LISTED
6 CHEMICAL. (*Health & Saf. Code, § 25249.7(a).*)

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

9 **PARTIES**

10 12. 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 section 25249.7.

14 13. Defendant BIG STRIKE, INC. ("BIG STRIKE") is a person doing business
15 within the meaning of California Health & Safety Code section 25249.11.

16 14. Defendant BIG STRIKE manufactures, distributes, and/or offers the PRODUCTS
17 for sale or use in the State of California or implies by its conduct that it manufactures,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

19 15. Defendant CHARLOTTE RUSSE, INC. ("CHARLOTTE RUSSE") is a person
20 doing business within the meaning of California Health & Safety Code section 25249.11.

21 16. Defendant CHARLOTTE RUSSE manufactures, distributes, and/or offers the
22 PRODUCTS for sale or use in the State of California or implies by its conduct that it
23 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

24 17. Defendant CHARLOTTE RUSSE HOLDING, INC. ("CHARLOTTE
25 HOLDING") is a person doing business within the meaning of California Health & Safety Code
26 section 25249.11.

1 18. Defendant CHARLOTTE HOLDING manufactures, distributes, and/or offers the
2 PRODUCTS for sale or use in the State of California or implies by its conduct that it
3 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

4 19. Defendant JODI KRISTOPHER, INC. (“JODI KRISTOPHER”) is a person doing
5 business within the meaning of California Health & Safety Code section 25249.11.

6 20. Defendant JODI KRISTOPHER manufactures, distributes, and/or offers the
7 PRODUCTS for sale or use in the State of California or implies by its conduct that it
8 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

9 21. Defendant LARRY HANSEL CLOTHING, LLC (“LARRY HANSEL
10 CLOTHING”) is a person doing business within the meaning of California Health & Safety
11 Code section 25249.11.

12 22. Defendant LARRY HANSEL CLOTHING manufactures, distributes, and/or
13 offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

15 23. Defendant ROGER GARMENTS INC. (“ROGER GARMENTS”) is a person
16 doing business within the meaning of California Health & Safety Code section 25249.11.

17 24. Defendant ROGER GARMENTS 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 California.

20 25. Defendant TANTRUM APPAREL, LLC (“TANTRUM”) is a person doing
21 business within the meaning of California Health & Safety Code section 25249.11.

22 26. Defendant TANTRUM manufactures, distributes, and/or offers the PRODUCTS
23 for sale or use in the State of California or implies by its conduct that it manufactures,
24 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

25 27. Defendant TRIXXI CLOTHING COMPANY, INC. (“TRIXXI”) is a person
26 doing business within the meaning of California Health & Safety Code section 25249.11.

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1 28. Defendant TRIXXI manufactures, distributes, and/or offers the PRODUCTS for
2 sale or use in the State of California or implies by its conduct that it manufactures, distributes,
3 and/or offers the PRODUCTS for sale or use in the State of California.

4 29. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
5 persons doing business within the meaning of California Health & Safety Code section
6 25249.11.

7 30. MANUFACTURER DEFENDANTS engage in the process of researching,
8 testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that
9 they engage in the process of researching, testing, designing, assembling, fabricating and/or
10 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

11 31. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
12 doing business within the meaning of California Health & Safety Code section 25249.11.

13 32. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
14 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
15 the State of California.

16 33. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
17 business within the meaning of California Health & Safety Code section 25249.11.

18 34. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California.

20 35. At this time, the true names of Defendants DOES 1-150, inclusive, are unknown
21 to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil
22 Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of
23 the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
24 When ascertained, their true names shall be reflected in an amended complaint.

25 36. BIG STRIKE, CHARLOTTE RUSSE, CHARLOTTE HOLDING, JODI
26 KRISTOPHER, LARRY HANSEL CLOTHING, ROGER GARMENTS, TANTRUM, TRIXXI,
27 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL
28

1 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
2 “DEFENDANTS.”

3 **VENUE AND JURISDICTION**

4 37. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
5 Procedure sections 394, 395, 395.5, because this Court is a court of competent jurisdiction,
6 because one or more instances of wrongful conduct occurred, and continues to occur, in the
7 County of Alameda and/or because DEFENDANTS conducted, and continue to conduct,
8 business in this county with respect to the PRODUCTS.

9 38. The California Superior Court has jurisdiction over this action pursuant to
10 California Constitution Article VI, section 10, which grants the Superior Court “original
11 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
12 which this action is brought does not specify any other basis of subject matter jurisdiction.

13 39. The California Superior Court has jurisdiction over DEFENDANTS based on
14 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
15 association that either are citizens of the State of California, have sufficient minimum contacts in
16 the State of California, or otherwise purposefully avail themselves of the California market.
17 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
18 courts consistent with traditional notions of fair play and substantial justice.

19 **FIRST CAUSE OF ACTION**

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

21 40. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
22 Paragraphs 1 through 39, inclusive.

23 41. The citizens of the State of California have expressly stated in Proposition 65 that
24 they must be informed “about exposures to chemicals that cause cancer, birth defects and other
25 reproductive harm.” (*Cal. Health & Saf. Code, § 25249.6.*)

26 42. Proposition 65 states, “No person in the course of doing business shall knowingly
27 and intentionally expose any individual to a chemical known to the state to cause cancer or
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1 reproductive toxicity without first giving clear and reasonable warning to such individual....”

2 (*Id.*)

3 43. On or about April 8, 2011, sixty-day notices of violation, together with the
4 requisite certificates of merit, were provided to each BIG STRIKE, LARRY HANSEL
5 CLOTHING, and various public enforcement agencies stating that as a result of the
6 DEFENDANTS’ sales of certain belts, purchasers and users in the State of California were being
7 exposed to di(2-ethylhexyl)phthalate resulting from the reasonably foreseeable uses of the belts,
8 without the individual purchasers and users first having been provided with a “clear and
9 reasonable warning” regarding such toxic exposures.

10 44. On or about April 19, 2011, a sixty-day notice of violation, together with the
11 requisite certificate of merit, were provided to TRIXXI and various public enforcement agencies
12 stating that as a result of the DEFENDANTS’ sales of certain belts, purchasers and users in the
13 State of California were being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably
14 foreseeable uses of the belts, without the individual purchasers and users first having been
15 provided with a “clear and reasonable warning” regarding such toxic exposures.

16 45. On or about April 25, 2011, sixty-day notices of violation, together with the
17 requisite certificate of merit, were provided to each CHARLOTTE RUSSE, CHARLOTTE
18 HOLDING, and various public enforcement agencies stating that as a result of the
19 DEFENDANTS’ sales of certain handbags, purchasers and users in the State of California were
20 being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably foreseeable uses of the
21 handbags, without the individual purchasers and users first having been provided with a “clear
22 and reasonable warning” regarding such toxic exposures.

23 46. On or about May 4, 2011, sixty-day notices of violation, together with the
24 requisite certificate of merit, were provided to each JODI KRISTOPHER, ROGER
25 GARMENTS, TANTRUM, and various public enforcement agencies stating that as a result of
26 the DEFENDANTS’ sales of certain belts, purchasers and users in the State of California were
27 being exposed to di(2-ethylhexyl)phthalate resulting from the reasonably foreseeable uses of the
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1 belts, without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures.

3 47. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code section 25249.6
5 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or
6 use in violation of California Health & Safety Code section 25249.6 has continued to occur
7 beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notices of violation. Plaintiff further
8 alleges and believes that such violations will continue to occur into the future.

9 48. After receipt of the claims asserted in the sixty-day notices of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a
11 cause of action against DEFENDANTS under Proposition 65.

12 49. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
14 limits.

15 50. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the
17 LISTED CHEMICAL.

18 51. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
19 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
20 during the reasonably foreseeable use of the PRODUCTS.

21 52. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
23 by 27 California Code of Regulations section 25602(b).

24 53. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
26 and/or ingestion.

27 54. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution, and/or offer for sale or use of
2 PRODUCTS to individuals in the State of California.

3 55. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use of the PRODUCTS.

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

12 57. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code section 25249.7(b).

15 58. As a consequence of the above-described acts, California Health & Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

23 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
25 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
26 warnings” as defined by 27 California Code of Regulations section 25601, as to the harms
27 associated with exposures to each of the LISTED CHEMICAL;

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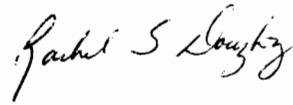
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 16, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 

Rachel S. Doughty
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.,