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**FILED**  
JUL 15 2011  
RETURN TO: ANTHONY E. HELD, PH.D., P.E.  
MARIN COUNTY SUPERIOR COURT  
2500 CALIFORNIA STREET  
SAN RAFAEL, CA 94903

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

11 ANTHONY E. HELD, PH.D., P.E., )  
12 Plaintiff, )  
13 v. )  
14 4 WHAT IT'S WORTH, INC.; and DOES 1- )  
15 150, inclusive, )  
16 Defendants. )

Case No. CIV 11035123  
**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 belts sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn  
7 California citizens about their exposure to DEHP, present in or on certain belts that defendant  
8 manufactures, imports, distributes, and/or offer 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 4 WHAT IT’S WORTH, INC. (“WIW” or “Defendant”) manufactures,  
21 imports, distributes, and/or sells belts containing DEHP including, but not limited to, *Mudd*  
22 *Jeans, Style #DJBM11056 (#6 14015 68118 7).*

23 6. All such belts containing DEHP, shall hereinafter be collectively referred to as the  
24 “PRODUCTS.”

25 7. Defendant’s 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 in conjunction with Defendant’s distribution, importation,  
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1 manufacturing, and/or sale of the PRODUCTS is a violation of Proposition 65 and subjects  
2 Defendant to enjoinder of such conduct as well as civil penalties for each such violation.

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

9 **PARTIES**

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

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

16 12. WIW manufactures, imports, distributes, and/or offers the PRODUCTS for sale or  
17 use in the State of California or implies by its conduct that it manufactures, imports, distributes,  
18 and/or offers the PRODUCTS for sale or use in the State of California.

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

21 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
22 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they  
23 engage in the process of research, 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.

1 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
2 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in  
3 the State of California.

4 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons  
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
7 State of California and, in some circumstances, may also be manufacturers and/or distributors.

8 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
9 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
10 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein  
12 alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 20. WIW, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
14 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to hereinafter  
15 as "DEFENDANTS."

16 **VENUE AND JURISDICTION**

17 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
18 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
19 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
20 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
21 County with respect to the PRODUCTS.

22 22. The California Superior Court has jurisdiction over this action pursuant to  
23 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction in  
24 all causes except those given by statute to other trial courts." The statute under which this action  
25 is brought does not specify any other basis of subject matter jurisdiction.

26 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
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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 April 19, 2011, a 60-Day Notice of Violation, together with the requisite  
17 Certificate of Merit (the "Notice"), was provided to WIW and various public enforcement  
18 agencies 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 WIW'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.

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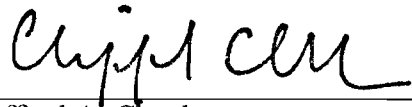
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: July 15, 2011

Respectfully Submitted,

THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorney for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.