

FILED

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Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fra... Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 FASHION AVENUE KNITS INC.; FASHION
18 AVENUE SWEATER KNITS, LLC; and DOES
19 1-150, inclusive,

20 Defendants.

Case No. CW 1104568

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. Held,
3 Ph.D., P.E., in the public interest of the citizens of the State of California, to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in belts sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain belts that defendants
8 manufacture, import, distribute, 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. Defendants manufacture, import, distribute, and/or sell belts containing DEHP
21 including, but not limited to, *United States Sweaters with Belt, Style #41149*. All such belts
22 containing DEHP shall hereinafter be referred to as the “Product[s].”

23 6. Defendants’ failure to warn consumers and/or other individuals in the State of
24 California about their exposure to DEHP in conjunction with defendants’ sale of the Products is
25 a violation of Proposition 65 and subjects defendants to enjoinder of such conduct as well as
26 civil penalties for each such violation.

1 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
2 permanent injunctive relief to compel defendants to provide purchasers or users of the Products
3 with the required warning regarding the health hazards of DEHP. (*Cal. Health & Safety Code* §
4 25249.7(a).)

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

7 **PARTIES**

8 9. Plaintiff Anthony E. Held, Ph.D., P.E. is a citizen of the State of California who is
9 dedicated to protecting the health of California citizens through the elimination or reduction of
10 toxic exposures from consumer and commercial Products, and brings this action in the public
11 interest pursuant to California Health & Safety Code § 25249.7.

12 10. Fashion Avenue Knits, Inc. ("Fashion Avenue") is a person doing business within
13 the meaning of California Health & Safety Code § 25249.11.

14 11. Fashion Avenue manufactures, imports, distributes, sells and/or offers the Products
15 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
16 distributes, sells and/or offers the Products for sale or use in the State of California.

17 12. Fashion Avenue Sweater Knits, LLC ("Fashion Sweater") is a person doing
18 business within the meaning of California Health & Safety Code § 25249.11.

19 13. Fashion Sweater manufactures, imports, distributes, sells and/or offers the Products
20 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
21 distributes, sells and/or offers the Products for sale or use in the State of California.

22 14. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons doing
23 business within the meaning of California Health & Safety Code § 25249.11.

24 15. Manufacturer Defendants engage in the process of research, testing, designing,
25 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
26 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
27 more of the Products for sale or use in the State of California.
28

1 Products for sale or use, in violation of California Health & Safety Code § 25249.6, has
2 continued to occur beyond Defendants' receipt of the Notice. 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 Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action against
6 Defendants under Proposition 65.

7 31. The Products manufactured, imported, distributed, and/or offered for sale or use in
8 California by Defendants contained DEHP above the allowable state limits.

9 32. Defendants knew or should have known that the Products manufactured, imported,
10 distributed, and/or offered for sale or use by Defendants in California contained DEHP.

11 33. DEHP was present in or on the Products in such a way as to expose individuals to
12 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
13 Products.

14 34. 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 35. Defendants had knowledge that the normal and reasonably foreseeable use of the
18 Products would expose individuals to DEHP through dermal contact and/or ingestion.

19 36. Defendants intended that such exposures to DEHP from the reasonably foreseeable
20 use of the Products would occur by their deliberate, non-accidental participation in the
21 manufacture, importation, distribution and/or offer for sale or use of Products to individuals in
22 the State of California.

23 37. Defendants failed to provide a "clear and reasonable warning" to those consumers
24 and/or other individuals in the State of California who were or who could become exposed to
25 DEHP through dermal contact and/or ingestion during the reasonably foreseeable use of the
26 Products.

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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 8, 2011

Respectfully Submitted,

THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.