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FILED

SEP - 7 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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

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

12 Plaintiff,)

13 v.)

14 BRANDON THOMAS DESIGNS, INC.; and)
DOES 1-150, inclusive,)

15 Defendants.)
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Case No. CIV 1104475

**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., (“Held” or “Plaintiff”) in the public interest of the citizens of the State of
4 California, to enforce the People’s right to be informed of the presence of di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic 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, sells, and/or offers for sale to consumers throughout the State
9 of 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 BRANDON THOMAS DESIGNS, INC. (“BRANDON THOMAS” or
21 “Defendant”) manufactures, imports, distributes, sells, and/or offers for sale belts containing
22 DEHP including, but not limited to, *Brandon Thomas Pants with Belt, Style WV50231BR.*

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 manufacture, sale, and/or offering for sale of the Products is a violation of Proposition 65 and
2 subjects Defendant to enjoinder of such conduct as well as civil penalties for each such
3 violation.

4 8. For Defendant's violation of Proposition 65, Plaintiff seeks preliminary injunctive
5 and permanent injunctive relief to compel Defendant to provide purchasers or users of the
6 Products with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
7 *Safety Code § 25249.7(a).*)

8 9. Plaintiff also seeks civil penalties against Defendant for its violations of
9 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

10 PARTIES

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

15 11. BRANDON THOMAS is a person doing business within the meaning of
16 California Health & Safety Code § 25249.11.

17 12. BRANDON THOMAS manufactures, imports, distributes, sells, and/or offers the
18 Products for sale or use in the State of California or implies by its conduct that it manufactures,
19 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

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

22 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the Products for sale or use in the State of California.

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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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 the
3 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 State
7 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. BRANDON THOMAS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
15 referred to hereinafter 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. Held 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 BRANDON THOMAS and various public
18 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution, sale,
19 and/or offering for sale of the Products, purchasers and users in the State of California were
20 being exposed to DEHP resulting from the reasonably foreseeable uses of the Products, without
21 the individual purchasers and users first having been provided with a "clear and reasonable
22 warning" regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
24 and/or offering of the Products for sale or use in violation of California Health & Safety Code
25 § 25249.6 and DEFENDANTS' manufacture, importation, distribution, sale, and/or offering of
26 the Products for sale or use in violation of California Health & Safety Code § 25249.6 has
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1 continued to occur beyond BRANDON THOMAS' receipt of Plaintiff's Notice. Plaintiff further
2 alleges and 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, sold, 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, sold, and/or offered for sale or use by DEFENDANTS in California
10 contained DEHP.

11 32. DEHP was present in or on the Products in such a way as to expose individuals to
12 DEHP through dermal contact and ingestion during the reasonably foreseeable use of the
13 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 in
21 the manufacture, importation, distribution, sale, 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.

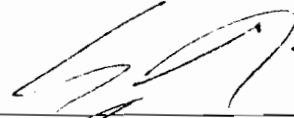
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: August 29, 2011

Respectfully Submitted,

THE CHANLER GROUP

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