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Troy C. Bailey, State Bar No. 277424
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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

FILED

SEP 20 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, 10/1/11

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

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
MACY'S INC.; MACY'S WEST STORES,
INC.; and DOES 1-150, inclusive,
Defendants.

Case No. CIV 1104672

**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
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in handbags 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 handbags that
8 defendants manufacture, import, distribute, and/or offer for sale to consumers throughout the
9 State 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. Defendants Macy’s, Inc. and Macy’s West Stores, Inc. (collectively “Macy’s” or
21 “Defendants”) manufacture, import, distribute, and/or sell handbags, in the State of California,
22 containing DEHP including, but not limited to, *Nina Ricci Handbag, #0065032525 (#3 137370*
23 *301882).*

24 6. All such handbags containing DEHP, shall hereinafter be collectively referred to as
25 the “Products.”

26 7. Defendants’ failure to warn consumers and/or other individuals in the State of
27 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
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1 *seq.* about their exposure to DEHP in conjunction with Defendants' distribution, importation,
2 manufacturing, and/or sale of the Products is a violation of Proposition 65 and subjects
3 Defendants to enjoinder of such conduct as well as civil penalties for each such violation.

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

10 **PARTIES**

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

15 11. Macy's, Inc. is a person doing business within the meaning of California Health &
16 Safety Code § 25249.11.

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

20 13. Macy's West Stores, Inc. is a person doing business within the meaning of
21 California Health & Safety Code § 25249.11.

22 14. Macy's West Stores, Inc. manufactures, imports, distributes, and/or offers the
23 Products for sale or use in the State of California or implies by its conduct that it manufactures,
24 imports, distributes, and/or offers the Products for sale or use in the State of California.

25 15. Defendants Does 1-50 ("Manufacturer Defendants") are each persons doing
26 business within the meaning of California Health & Safety Code § 25249.11.

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1 30. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
2 offering of the Products for sale or use in violation of California Health & Safety Code § 25249.6
3 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the Products for
4 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur
5 Macy's receipt of the Notice. Plaintiff further alleges and believes that such violations will
6 continue to occur into the future.

7 31. After receipt of the claims asserted in the Notice, the appropriate public
8 enforcement agencies have failed to commence and diligently prosecute a cause of action against
9 DEFENDANTS under Proposition 65.

10 32. The Products manufactured, imported, distributed, and/or offered for sale or use in
11 California by DEFENDANTS contained DEHP above the allowable state limits.

12 33. DEFENDANTS knew or should have known that the Products manufactured,
13 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
14 DEHP.

15 34. DEHP was present in or on the Products in such a way as to expose individuals to
16 DEHP through dermal contact and ingestion during the reasonably foreseeable use of the
17 Products.

18 35. The normal and reasonably foreseeable use of the Products has caused and
19 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by
20 27 California Code of Regulations ("CCR") § 25602(b).

21 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
22 the Products would expose individuals to DEHP through dermal contact and ingestion.

23 37. DEFENDANTS intended that such exposures to DEHP from the reasonably
24 foreseeable use of the Products would occur by their deliberate, non-accidental participation in
25 the manufacture, importation, distribution, and/or offer for sale or use of Products to individuals
26 in the State of California.

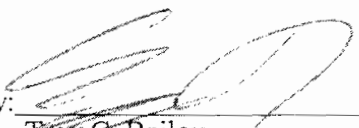
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 20, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
Anthony E. Held, PH.D., P.E.