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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PhD., P.E.,

16 Plaintiff,

17 v.

18 HOT TOPIC, INC.; and DOES 1-150,  
19 inclusive,

20 Defendants.

21 Case No. **CGC-11-512246**

22 **COMPLAINT FOR CIVIL PENALTIES  
23 AND INJUNCTIVE RELIEF**

24 (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  
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 footwear sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about their exposure to DEHP present in or on footwear that defendants  
8 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

9 3. High levels of DEHP are commonly found in and on the footwear that defendants  
10 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

11 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
12 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the  
13 course of doing business shall knowingly and intentionally expose any individual to a chemical  
14 known to the state to cause cancer or reproductive toxicity without first giving clear and  
15 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

16 5. On October 24, 2003, California identified and listed DEHP as a chemical known  
17 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and  
18 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.  
19 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &  
20 25249.10(b).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

21 6. Defendants manufacture, distribute, and/or offer for sale footwear containing  
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *HT Scribble STR*  
23 *STD Flip Flops, #161860-002, Style No. TS9J6*. All such footwear containing the LISTED  
24 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and/or other individuals in the State of  
26 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
27 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder  
28 of such conduct as well as civil penalties for each such violation.



1 in the State of California.

2 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in  
3 the course of doing business within the meaning of California Health & Safety Code §  
4 25249.11.

5 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
6 State of California.

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

12 20. HOT TOPIC, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
13 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
14 referred to as “DEFENDANTS.”

15 **VENUE AND JURISDICTION**

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

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

25 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
26 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
27 association that is a citizen of the State of California, has sufficient minimum contacts in the  
28 State of California, or otherwise purposefully avails itself of the California market.

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
2 California courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**

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

5 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
6 Paragraphs 1 through 23, inclusive.

7 25. The citizens of the State of California have expressly stated in the Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
9 that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
10 other reproductive harm." (Cal. Health & Safety Code, § 25249.6.)

11 26. Proposition 65 states, "[n]o person in the course of doing business shall  
12 knowingly and intentionally expose any individual to a chemical known to the state to cause  
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
14 individual..." (*Ibid.*)

15 27. On or about April 25, 2011, a sixty-day notice of violation, together with the  
16 requisite certificate of merit, was provided to HOT TOPIC and various public enforcement  
17 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers  
18 and users in the State of California were being exposed to DEHP resulting from the reasonably  
19 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
20 been provided with a "clear and reasonable warning" regarding such toxic exposures.

21 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
22 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and  
23 DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for sale or use  
24 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
25 DEFENDANTS' receipt of Plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
26 believes that such violations will continue to occur into the future.

27 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a

1 cause of action against DEFENDANTS under Proposition 65.

2 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
3 California by DEFENDANTS contained the LISTED CHEMICAL in an amount above the  
4 allowable state limits.

5 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
6 distributed, and/or offered for sale or use in California contained the LISTED CHEMICAL.

7 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as  
8 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion  
9 during the reasonably foreseeable use of the PRODUCTS.

10 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
11 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposure is  
12 defined by Title 27 CCR § 25602(b).

13 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
15 and/or ingestion.

16 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
17 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
18 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
19 sale or use to individuals in the State of California.

20 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
21 consumers and/or other individuals in the State of California who were, or who could become,  
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
23 reasonably foreseeable use of the PRODUCTS.

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

