

**ENDORSED
FILED**
San Francisco County Superior Court

AUG 11 2011

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

1 Clifford A. Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
12

13 ANTHONY E. HELD, PhD., P.E.,

14 Plaintiff,

15 v.

16 PRIDE & JOYS, INC.; and DOES 1-150,
17 inclusive,

18 Defendants.
19

CGC-11-513302

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

NATURE OF THE ACTION

1
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 belts sold in California.

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

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

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

17 5. On October 24, 2003, California identified and listed DEHP as a chemical known
18 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
19 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.
20 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
21 25249.10(b).)

22 6. Defendants manufacture, distribute, and/or offer for sale belts containing
23 excessive levels of DEHP including, but not limited to, *Snap Dress with Belt, Style #413*. All
24 such belts containing DEHP 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 not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive
28 harm in conjunction with Defendants’ distribution, importation, manufacturing, and/or sale of

1 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
2 conduct as well as civil penalties for each such violation.

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

9 **PARTIES**

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

14 11. Defendant PRIDE & JOYS, INC. ("PRIDE") is a person in the course of doing
15 business within the meaning of California Health & Safety Code § 25249.11.

16 12. Defendant PRIDE manufactures, distributes, and/or offers the PRODUCTS for
17 sale or use in the State of California, or implies by its conduct that it manufactures, 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
20 persons in the course of doing business within the meaning of California Health & Safety Code
21 § 25249.11.

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

26 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 in the course of doing business within the meaning of California Health & Safety Code §
28 25249.11.

1 or association that is a citizen of the State of California, has sufficient minimum contacts in the
2 State of California, or otherwise purposefully avails itself of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California 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 the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
11 that they must be informed "about exposures to chemicals that cause cancer, birth defects and
12 other reproductive harm." (Cal. Health & Safety Code, § 25249.6.)

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

17 27. On or about May 4, 2011, plaintiff's sixty-day notice of violation, together with
18 the requisite certificate of merit, was provided to PRIDE and various public enforcement
19 agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers
20 and users in the State of California were being exposed to DEHP resulting from the reasonably
21 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
22 been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

1 29. After receipt of the claims asserted in the sixty-day notice of violation, the
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a
3 cause of action against DEFENDANTS under Proposition 65.

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

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

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

11 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
12 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
13 § 25602(b).

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

16 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
17 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
18 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
19 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 DEHP through dermal contact and/or ingestion during the reasonably foreseeable
23 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 DEHP through dermal contact and/or
26 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
27 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.

