

FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

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

15 ANTHONY E. HELD, Ph.D., P.E.,

16 Plaintiff,

17 v.

18 TRACY EVANS LLC; TRACY EVANS,
19 LTD.; STAR CITY SPORTSWEAR, INC.;
20 and DOES 1-150, inclusive,

21 Defendants.

Case No. CV 1103968

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 E.
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, *Star City Skirt with Belt, Style*
24 *#67420404 (#7 92142 27568 1)*. All such belts containing DEHP shall hereinafter be referred to
25 as 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*
28 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive

1 harm in conjunction with Defendants' distribution, importation, manufacturing, and/or sale of
2 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
3 conduct as well as civil penalties for each such violation.

4 8. For defendants' violations 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 by California Health & Safety Code § 25249.7(b).

10 **PARTIES**

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

15 11. Defendant TRACY EVANS LLC ("TRACY") is a person in the course of doing
16 business within the meaning of California Health & Safety Code § 25249.11.

17 12. Defendant TRACY manufactures, distributes, and/or offers the PRODUCTS for
18 sale or use in the state of California, or implies by its conduct that it manufactures, distributes,
19 and/or offers the PRODUCTS for sale or use in the state of California.

20 13. Defendant TRACY EVANS, LTD. ("TRACY LTD") is a person in the course of
21 doing business within the meaning of California Health & Safety Code § 25249.11.

22 14. Defendant TRACY LTD manufactures, distributes, and/or offers the PRODUCTS
23 for sale or use in the state of California, or implies by its conduct that it manufactures,
24 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

25 15. Defendant STAR CITY SPORTSWEAR, INC. ("STAR CITY") is a person in the
26 course of doing business within the meaning of California Health & Safety Code § 25249.11.

1 16. Defendant STAR CITY manufactures, distributes, and/or offers the PRODUCTS
2 for sale or use in the state of California, or implies by its conduct that it manufactures,
3 distributes, and/or offers the PRODUCTS for sale or use in the state of California.

4 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
5 persons in the course of doing business within the meaning of California Health & Safety Code
6 § 25249.11.

7 18. MANUFACTURER DEFENDANTS engage in the process of researching,
8 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
9 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
10 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

11 19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
12 in the course of doing business within the meaning of California Health & Safety Code §
13 25249.11.

14 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
15 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
16 in the state of California.

17 21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
18 the course of doing business within the meaning of California Health & Safety Code §
19 25249.11.

20 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 state of California.

22 23. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
23 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
24 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
25 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
26 herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 30. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual....” (*Ibid.*)

5 31. On or about May 4, 2011, plaintiff’s sixty-day notice of violation, together with
6 the requisite certificate of merit, was provided to TRACY, TRACY LTD, STAR CITY, and
7 various public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
8 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP
9 resulting from the reasonably foreseeable use of the PRODUCTS without the individual
10 purchasers and users first having been provided with a “clear and reasonable warning”
11 regarding such toxic exposures.

12 32. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
13 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
14 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use
15 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
16 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
17 believes that such violations will continue to occur into the future.

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

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

23 35. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
24 distributed, and/or offered for sale or use in California contained DEHP.

25 36. DEHP was present in or on the PRODUCTS in such a way as to expose
26 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
27 use of the PRODUCTS.

1 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
2 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
3 § 25602(b).

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

6 39. DEFENDANTS intended that such exposures to DEHP from the reasonably
7 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
8 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
9 individuals in the state of California.

10 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
11 consumers and/or other individuals in the state of California who were, or who could become,
12 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
13 use of the PRODUCTS.

14 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
15 directly by California voters, individuals exposed to DEHP through dermal contact and/or
16 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
17 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
18 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

19 42. As a consequence of the above-described acts, DEFENDANTS are liable for a
20 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
21 Safety Code § 25249.7(b).

22 43. As a consequence of the above-described acts, California Health & Safety Code
23 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
24 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
4 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
5 alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure to DEHP;

10 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

11 4. That the Court grant such other and further relief as may be just and proper.

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13 Dated: August 5, 2011

14 Respectfully Submitted,
15 THE CHANLER GROUP

16 By: 

17 Brian C. Johnson
18 Attorneys for Plaintiff
19 ANTHONY E. HELD, PHD., P.E.