

FILED

JUL 25 2011

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Fragniere, Deputy

1 Clifford A. Chanler, State Bar No. 135534  
Josh Voorhees, State Bar No. 241436  
2 Brian C. Johnson, State Bar No. 235965  
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.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
10 UNLIMITED CIVIL JURISDICTION  
11

12 ANTHONY E. HELD, PhD., P.E.,

13 Plaintiff,

14 v.

15  
16 JOANN MARIE DESIGNS, INC. and DOES  
1-150, inclusive,

17 Defendants.  
18

Case No. Cv1103669 -

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

20  
21  
22  
23  
24  
25  
26  
27 **SUMMONS ISSUED**  
28

**NATURE OF THE ACTION**

1  
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 purses 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 purses 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 purses 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 purses containing  
22 excessive levels of the LISTED CHEMICAL including, but not limited to, *JoAnn Marie*  
23 *Designs Travel Purse Slip On (#6 37353 03297 8)*. All such purses 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 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 JOANN MARIE and various public  
19 enforcement agencies stating that, as a result of the DEFENDANTS' sales of the PRODUCTS,  
20 purchasers and users in the State of California were being exposed to DEHP resulting from the  
21 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
22 having 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 the sixty-day notice. Plaintiff further alleges and believes that such  
28 violations will continue to occur into the future.

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

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

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

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

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

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

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

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

26           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold

1 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
2 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

6 39. As a consequence of the above-described acts, California Health & Safety Code  
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

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

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

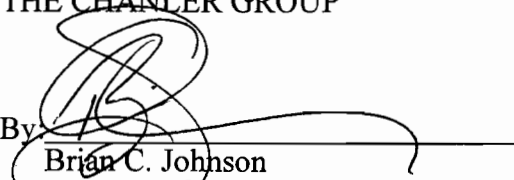
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
16 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
17 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure the LISTED  
18 CHEMICAL;

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

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

21  
22 Dated: July 25, 2011

Respectfully Submitted,  
THE CHANLER GROUP

23  
24  
25 By:   
26 Brian C. Johnson  
27 Attorneys for Plaintiff  
28 ANTHONY E. HELD, PHD., P.E.