

FILED

SEP - 7 2011

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Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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

14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 AMERICAN APPAREL, INC.; AMERICAN
18 APPAREL (USA), LLC; and DOES 1-150,
19 inclusive,

20 Defendants.

21) Case No. CIV 1104470
22)
23) **COMPLAINT FOR CIVIL PENALTIES**
24) **AND INJUNCTIVE RELIEF**
25) (Cal. Health & Safety Code. § 25249.6 *et seq.*)
26)
27)
28)

BY FAX

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 cosmetic cases/bags and cases for laptops 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 cosmetic cases/bags and
8 cases for laptops that defendants manufacture, import, distribute, sell, and/or offer for sale to
9 consumers throughout the 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”), “[n]o person in the
12 course of doing business shall knowingly and intentionally expose any individual to a chemical
13 known to the state to cause cancer or reproductive toxicity without first giving clear and
14 reasonable 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 “clear and
17 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.
18 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
19 25249.10(b).)

20 5. Defendants manufacture, import, distribute, sell, and/or offer for sale cosmetic
21 cases/bags and cases for laptops containing DEHP as follows:

22 a. Defendant American Apparel, Inc. (“AMERICAN APPAREL”)
23 manufactures, imports, distributes, sells, and/or offers for sale cosmetic cases/bags and
24 cases for laptops containing DEHP including, but not limited to, the *Vinyl Make-Up Bag*,
25 *RSAPV502* and the *Vinyl Laptop Bag, RSAPV504*.

1 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of
2 California.

3 14. AMERICAN APPAREL USA is a person in the course of doing business within
4 the meaning of California Health & Safety Code § 25249.11.

5 15. AMERICAN APPAREL USA manufactures, imports, distributes, sells, and/or
6 offers the Products for sale or use in the State of California, or implies by its conduct that it
7 manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the State of
8 California.

9 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
10 persons in the course of doing business within the meaning of California Health & Safety Code
11 § 25249.11.

12 17. MANUFACTURER DEFENDANTS engage in the process of researching,
13 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
14 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
15 manufacturing, one or more of the Products offered for sale or use in the State of California.

16 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
17 in the course of doing business within the meaning of California Health & Safety Code §
18 25249.11.

19 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
20 transport one or more of the Products to individuals, businesses, or retailers for sale or use in the
21 State of California.

22 20. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
23 the course of doing business within the meaning of California Health & Safety Code §
24 25249.11.

25 21. RETAILER DEFENDANTS offer the Products for sale to individuals in the State
26 of California.

1 **FIRST CAUSE OF ACTION**

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

3 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 26, inclusive.

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

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

13 30. On or about May 11, 2011, a 60-Day Notice of violation, together with the
14 requisite Certificate of Merit (“Notice”), was provided to AMERICAN APPAREL,
15 AMERICAN APPAREL USA, and various public enforcement agencies stating that, as a result
16 of DEFENDANTS’ sales of the Products, purchasers and users in the State of California were
17 being exposed to DEHP resulting from the reasonably foreseeable use of the Products without
18 the individual purchasers and users first having been provided with a “clear and reasonable
19 warning” regarding such toxic exposures.

20 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale
21 and/or offering of the Products for sale or use in violation of California Health & Safety Code §
22 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sale and/or offering of
23 the Products for sale or use in violation of California Health & Safety Code § 25249.6 has
24 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notice. Plaintiff further
25 alleges and believes that such violations will continue to occur into the future.

1 32. After receipt of the claims asserted in the 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 33. The Products manufactured, imported, distributed, sold and/or offered for sale or
5 use in California by DEFENDANTS contained DEHP in an amount above the allowable state
6 limits.

7 34. DEFENDANTS knew or should have known that the Products manufactured,
8 imported, distributed, sold and/or offered for sale or use in California contained DEHP.

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

12 36. The normal and reasonably foreseeable use of the Products has caused, and
13 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
14 § 25602(b).

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

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

21 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers and/or other individuals in the State of California who were, or who could become,
23 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
24 use of the Products.

25 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to DEHP through dermal contact and/or
27 ingestion resulting from the reasonably foreseeable use of the Products sold by DEFENDANTS
28

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

3 41. 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 42. 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;

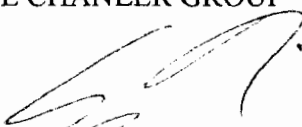
14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, selling,
16 and/or offering the Products for sale or use in California, without providing "clear and
17 reasonable warnings" as defined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

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: August 29, 2011

Respectfully Submitted,
THE CHANLER GROUP

23
24
25 By: 
26 Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.