

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.

FILED

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KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deput

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

11 ANTHONY E. HELD, PhD., P.E.,

12 Plaintiff,

13 v.

14 AMICI ACCESSORIES, LTD. and DOES 1-
15 150, inclusive,

16 Defendants.

Case No. CIV 1104473

**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 handbags 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 handbags that
8 defendants manufacture, distribute, and/or offer for sale to consumers throughout the state of
9 California.

10 3. High levels of DEHP are commonly found in and on the handbags 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).) DEHP shall be referred to hereinafter as the "LISTED CHEMICAL."

22 6. Defendants manufacture, distribute, and/or offer for sale handbags containing
23 excessive levels of the LISTED CHEMICAL including, but not limited to, the *Styles Fur Trim*
24 *Handbag, #416000006100, #1000005430*). All such handbags containing the LISTED
25 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

26 7. Defendants' failure to warn consumers and/or other individuals in the state of
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'

1 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder
2 of such 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 the LISTED
6 CHEMICAL. (Cal. Health & 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 AMICI ACCESSORIES, LTD. ("AMICI") is a person in the course of
15 doing business within the meaning of California Health & Safety Code § 25249.11.

16 12. Defendant AMICI 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 research, testing,
23 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, 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 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 11, 2011, plaintiff's sixty-day notice of violation, together with
18 the requisite certificate of merit, was provided to AMICI 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 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 contain 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 contain 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 Title 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: August 31, 2011

Respectfully Submitted,
THE CHANLER GROUP

23
24
25 B:


26 Brian C. Johnson
27 Attorneys for Plaintiff
28 ANTHONY E. HELD, PHD., P.E.