

NATURE OF THE ACTION

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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 apparel 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 apparel 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 apparel 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 apparel containing
22 excessive levels of the LISTED CHEMICAL including, but not limited to, the *AKDMKS Jacket,*
23 *Spicy Orange, #33904, AS1005010 (#8 85520 00606 6).* All such apparel containing the
24 LISTED 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 Francisco County, and/or because DEFENDANTS conducted, and continue to conduct,
2 business in this county with respect to the PRODUCTS.

3 24. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
5 in all causes except those given by statute to other trial courts.” The statute under which this
6 action is brought does not specify any other basis of subject matter jurisdiction.

7 25. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that is a citizen of the state of California, has sufficient minimum contacts in the
10 state of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

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

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

25 29. On or about May 11, 2011, plaintiff’s sixty-day notice of violation, together with
26 the requisite certificate of merit, was provided to MAGIC BRANDS, KEMISTRE 8 and various
27 public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
28 PRODUCTS, purchasers and users in the state of California were being exposed to DEHP

1 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
2 purchasers and users first having been provided with a “clear and reasonable warning”
3 regarding such toxic exposures.

4 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
5 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
6 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
7 notice. Plaintiff further alleges and believes that such violations will continue to occur into the
8 future.

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

12 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contain the LISTED CHEMICAL in an amount above the
14 allowable state limits.

15 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use in California contain the LISTED CHEMICAL.

17 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
18 to expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion
19 during the reasonably foreseeable use of the PRODUCTS.

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

23 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
25 and/or ingestion.

26 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
28

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use to individuals in the state of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the state of California who were, or who could become,
5 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
6 reasonably foreseeable use of the PRODUCTS.

7 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
10 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
11 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

15 41. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

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

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

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 26, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 

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