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7

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By: K. Yarborough, Deputy

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

12 ANTHONY E. HELD, PH.D., P.E., and
13 JOHN MOORE,

14 Plaintiffs,

15 v.

16 AMERICAN APPAREL, INC.; AMICI
ACCESSORIES, LTD.; AMWAY CORP.;
17 ATICO INTERNATIONAL USA, INC.;
BALLET JEWELS, LLC; BOSS
18 MANUFACTURING COMPANY; CAROLE
FABRICS, INC.; GURWITCH PRODUCTS,
19 L.L.C.; J.C. PENNEY CORPORATION, INC.;
LEISURE ARTS, INC.; LEVI STRAUSS &
20 CO.; MARC FISHER LLC; MICHAELS
STORES, INC.; MUD PIE, LLC; TOMMY
21 BAHAMA GROUP, INC.; WESTERN
DIGITAL CORPORATION; WILLIAMS-
22 SONOMA, INC.; ZONE ENTERPRISES OF
ANAHEIM, LLC; and DOES 1-150, inclusive,

23 Defendants.
24

Case No. CIV1105882

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiffs ANTHONY E.
3 HELD, Ph.D., P.E. and JOHN MOORE (collectively “plaintiffs”), in the public interest of the
4 citizens of the State of California, to enforce the People’s right to be informed of the presence of
5 di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”), phthalate chemicals
6 found in consumer products sold in California.

7 2. By this Complaint, plaintiffs seek to remedy defendants’ continuing failure to warn
8 California citizens about their exposure to DEHP, present in or on certain cosmetic cases/bags,
9 cases for laptops, handbags, travel cases, footwear, covers/cases/bags/cords for mobile electronic
10 devices, bracelets, coats/jackets, vinyl fabric, belts, coverings for journals, coverings for
11 books/albums, luggage tags, toiletry cases, cases with zipper pulls, chairs with vinyl seats, and
12 keychains, that defendants manufacture, import, distribute and/or offer for sale to consumers
13 throughout the State of California. Plaintiffs also seek to remedy defendants’ continuing failure
14 to warn California citizens about their exposure to DBP, present in or on certain footwear and
15 covers/cases/bags/cords for mobile electronic devices that defendants manufacture, import,
16 distribute and/or offer for sale to consumers throughout the State of California.

17 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
18 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
19 of doing business shall knowingly and intentionally expose any individual to a chemical known
20 to the State to cause cancer or reproductive toxicity without first giving clear and reasonable
21 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

22 4. On October 24, 2003, California identified and listed DEHP as a chemical known
23 to cause birth defects and other reproductive harm. DEHP became subject to the warning
24 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
25 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal.*
26 *Health & Safety Code § 25249.8.*)

27 5. On December 2, 2005, California identified and listed DBP as a chemical known
28 to cause birth defects and other reproductive harm. DBP became subject to the warning

1 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
2 requirements of Proposition 65, beginning on December 2, 2006. (27 CCR § 27001 (c); Cal.
3 Health & Safety Code §§ 25249.8 & 25249.10(b).)

4 6. Defendants manufacture, import, distribute, and/or sell cosmetic cases/bags, cases
5 for laptops, handbags, travel cases, footwear, covers/cases/bags/cords for mobile electronic
6 devices, bracelets, coats/jackets, vinyl fabric, belts, coverings for journals, coverings for
7 books/albums, luggage tags, toiletry cases, cases with zipper pulls, and chairs with vinyl seats,
8 containing DEHP, and footwear and covers/cases/bags/cords for mobile electronic devices
9 containing DBP, as follows:

10 a. Defendant AMERICAN APPAREL, INC. manufactures, imports,
11 distributes, and/or sells cosmetic cases/bags containing DEHP including, but not
12 limited to *Vinyl Make-Up Bag, RSAPV502*; and cases for laptops containing
13 DEHP including, but not limited to *Vinyl Laptop Bag, RSAPV504*;

14 b. Defendant AMICI ACCESSORIES, LTD. manufactures, imports,
15 distributes, and/or sells handbags containing DEHP including, but not limited to
16 *Styles Fur Trim Handbag, #416000006100, #1000005430*;

17 c. Defendant AMWAY CORP. manufactures, imports, distributes,
18 and/or sells travel cases containing DEHP including, but not limited to *Personal*
19 *Accents Brittany Jewelry Travel Case, Item #748371*;

20 d. Defendant ATICO INTERNATIONAL USA, INC. manufactures,
21 imports, distributes, and/or sells footwear containing DEHP and/or DBP or any
22 combination thereof;

23 e. Defendant ATICO INTERNATIONAL USA, INC. manufactures,
24 imports, distributes, and/or sells covers/cases/bags/cords for mobile electronic
25 devices containing DEHP and/or DBP or any combination thereof;

26 f. Defendant BALLET JEWELS, LLC manufactures, imports,
27 distributes, and/or sells bracelets containing DEHP including, but not limited to,
28 *Mudd Bracelet, #111499M1C001 (#7 19267 34442 9)*;

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g. Defendant BOSS MANUFACTURING COMPANY manufactures, imports, distributes, and/or sells coats/jackets containing DEHP including, but not limited to, *Boss Poncho, Style #63 (#0 72874 00630 3)*;

h. Defendant CAROLE FABRICS, INC. manufactures, imports, distributes, and/or sells vinyl fabric containing DEHP including, but not limited to, *Fabric, Cheyenne Spice, SKU #1098811035*;

i. Defendant GURWITCH PRODUCTS, L.L.C. manufactures, imports, distributes, and/or sells cosmetic bags/cases containing DEHP including, but not limited to, *Laura Mercier Eyelash Curler (#7 36150 07965 7)*;

j. Defendant J.C. PENNEY CORPORATION, INC. manufactures, imports, distributes, and/or sells belts containing DEHP including, but not limited to, *Worthington Modern Fit Ankle Pants with Belt, #816-2703 0232*;

k. Defendant LEISURE ARTS, INC. manufactures, imports, distributes, and/or sells coverings for journals containing DEHP including, but not limited to, *Knit Along With Debbie Macomber The Knitter's Complete Journal, #75165 (#0 28906 75165 9)*;

l. Defendant LEVI STRAUSS & CO. manufactures, imports, distributes, and/or sells belts containing DEHP including, but not limited to, *Levi's 515 Bermuda Shorts with Belt, #330150007 (#0 39304 18240 2)*;

m. Defendant MARC FISHER LLC manufactures, imports, distributes, and/or sells footwear containing DBP including, but not limited to, *Guess Sandals, GWECLIPSIS (#8 84427 97550 5)* and *Guess Sandals, WGFUNKEE2 (#8 86113 44648 1)*;

n. Defendant MICHAELS STORES, INC. manufactures, imports, distributes, and/or sells coverings for books/albums containing DEHP including, but not limited to, *Photo Album, #101005 (#4 00100 59754 5)*; and luggage tags containing DEHP including, but not limited to, *Luggage Tag - Bombshell (#8 23398 66456 8)*;

1 o. Defendant MUD PIE, LLC manufactures, imports, distributes,
2 and/or sells cosmetic cases/bags containing DEHP including, but not limited to,
3 *Mud Pie W Initial Cosmetic Bag, Item #302216 (#7 18540 07824 2)*;

4 p. Defendant TOMMY BAHAMA GROUP, INC. manufactures,
5 imports, distributes, and/or sells toiletry cases/bags containing DEHP including,
6 but not limited to, *Tommy Bahama Traveler's Collection Amenity Set, #10-845*
7 *(#039794668608)*;

8 q. Defendant WESTERN DIGITAL CORPORATION manufactures,
9 imports, distributes, and/or sells cases with zipper pulls containing DEHP
10 including, but not limited to, *WD My Passport Essential SE Portable Hard Drive,*
11 *Model WDBACX7500ABK-NECS, ITEM #546165 (#7 18037 77337 7)*;

12 r. Defendant WILLIAMS-SONOMA, INC. manufactures, imports,
13 distributes, and/or sells chairs with vinyl seats containing DEHP including, but
14 not limited to, *PB Teen Airgo Armless Chair, #77-2310977 PT, #2310977*; and

15 s. Defendant ZONE ENTERPRISES OF ANAHEIM, LLC
16 manufactures, imports, distributes, and/or sells keychains containing DEHP
17 including, but not limited to, *ESPN Keychain (#4 00118 05053 7)*.

18 7. All cosmetic cases/bags, cases for laptops, handbags, travel cases, footwear,
19 covers/cases/bags/cords for mobile electronic devices, bracelets, coats/jackets, vinyl fabric, belts,
20 coverings for journals, coverings for books/albums, luggage tags, toiletry cases, cases with
21 zipper pulls, chairs with vinyl seats, and keychains, containing DEHP, and footwear and
22 covers/cases/bags/cords for mobile electronic devices containing DBP, as listed above in
23 paragraphs 6(a) through (s) above, shall hereinafter be referred to as the "PRODUCTS." As to
24 each specific defendant, however, PRODUCTS shall refer only to those specific products listed
25 for each specific defendant in paragraphs 6(a) through (s) above.

26 8. DEHP and DBP shall collectively hereinafter be referred to as the "LISTED
27 CHEMICALS." As to each specific defendant, however, LISTED CHEMICALS shall refer only
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1 to the specific chemical(s) listed for each specific defendant in paragraphs 6(a) through (s)
2 above.

3 9. Defendants' failure to warn adequately, if at all, a variety of California consumers,
4 businesses, employees, and other persons not covered by California's Occupational Safety
5 Health Act, Labor Code section 6300 *et seq.*, in the State of California about their exposure to
6 the LISTED CHEMICALS in conjunction with defendants' distribution, importation,
7 manufacturing, and sale of the PRODUCTS is a violation of Proposition 65 and subjects
8 defendants to enjoinder of such conduct as well as civil penalties for each violation.

9 10. For defendants' violations of Proposition 65, plaintiffs seek preliminary injunctive
10 and permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards of the LISTED
12 CHEMICALS. (*Cal. Health & Safety Code § 25249.7(a).*)

13 11. Plaintiffs also seek civil penalties against defendants for their violations of
14 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

15 **PARTIES**

16 12. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
17 protecting the health of California citizens through the elimination or reduction of toxic
18 exposures from consumer and commercial products, and brings this action in the public interest
19 pursuant to California Health & Safety Code § 25249.7.

20 13. Plaintiff ANTHONY E. HELD, Ph.D., P.E. is a citizen of the State of California
21 who is dedicated to protecting the health of California citizens through the elimination or
22 reduction of toxic exposures from consumer and commercial products, and brings this action in
23 the public interest pursuant to California Health & Safety Code § 25249.7.

24 14. Defendant AMERICAN APPAREL, INC. ("AMERICAN") is a person doing
25 business within the meaning of California Health & Safety Code § 25249.11.

26 15. Defendant AMERICAN manufactures, imports, distributes, and/or offers the
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it
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1 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 16. Defendant AMICI ACCESSORIES, LTD. (“AMICI”) is a person doing business
4 within the meaning of California Health & Safety Code § 25249.11.

5 17. Defendant AMICI manufactures, imports, distributes, and/or offers the
6 PRODUCTS for sale or use in the State of California or implies by its conduct that it
7 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
8 California.

9 18. Defendant AMWAY CORP. (“AMWAY”) is a person doing business within the
10 meaning of California Health & Safety Code § 25249.11.

11 19. Defendant AMWAY manufactures, imports, distributes, and/or offers the
12 PRODUCTS for sale or use in the State of California or implies by its conduct that it
13 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
14 California.

15 20. Defendant ATICO INTERNATIONAL USA, INC. (“ATICO”) is a person doing
16 business within the meaning of California Health & Safety Code § 25249.11.

17 21. Defendant ATICO manufactures, imports, distributes, and/or offers the
18 PRODUCTS for sale or use in the State of California or implies by its conduct that it
19 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
20 California.

21 22. Defendant BALLETT JEWELS, LLC (“BALLETT”) is a person doing business
22 within the meaning of California Health & Safety Code § 25249.11.

23 23. Defendant BALLETT manufactures, imports, distributes, and/or offers the
24 PRODUCTS for sale or use in the State of California or implies by its conduct that it
25 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
26 California.

27 24. Defendant BOSS MANUFACTURING COMPANY (“BOSS”) is a person doing
28 business within the meaning of California Health & Safety Code § 25249.11.

1 25. Defendant BOSS manufactures, imports, distributes, and/or offers the PRODUCTS
2 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
3 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

4 26. Defendant CAROLE FABRICS, INC. ("CAROLE") is a person doing business
5 within the meaning of California Health & Safety Code § 25249.11.

6 27. Defendant CAROLE manufactures, imports, distributes, and/or offers the
7 PRODUCTS for sale or use in the State of California or implies by its conduct that it
8 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
9 California.

10 28. Defendant GURWITCH PRODUCTS, L.L.C. ("GURWITCH") is a person doing
11 business within the meaning of California Health & Safety Code § 25249.11.

12 29. Defendant GURWITCH manufactures, imports, distributes, and/or offers the
13 PRODUCTS for sale or use in the State of California or implies by its conduct that it
14 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
15 California.

16 30. Defendant J.C. PENNEY CORPORATION, INC. ("J.C. PENNEY") is a person
17 doing business within the meaning of California Health & Safety Code § 25249.11.

18 31. Defendant J.C. PENNEY manufactures, imports, distributes, and/or offers the
19 PRODUCTS for sale or use in the State of California or implies by its conduct that it
20 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
21 California.

22 32. Defendant LEISURE ARTS, INC. ("LEISURE") is a person doing business within
23 the meaning of California Health & Safety Code § 25249.11.

24 33. Defendant LEISURE manufactures, imports, distributes, and/or offers the
25 PRODUCTS for sale or use in the State of California or implies by its conduct that it
26 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
27 California.

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1 34. Defendant LEVI STRAUSS & CO. (“LEVI”) is a person doing business within the
2 meaning of California Health & Safety Code § 25249.11.

3 35. Defendant LEVI manufactures, imports, distributes, and/or offers the PRODUCTS
4 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
5 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

6 36. Defendant MARC FISHER LLC (“FISHER”) is a person doing business within
7 the meaning of California Health & Safety Code § 25249.11.

8 37. Defendant FISHER manufactures, imports, distributes, and/or offers the
9 PRODUCTS for sale or use in the State of California or implies by its conduct that it
10 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
11 California.

12 38. Defendant MICHAELS STORES, INC. (“MICHAELS”) is a person doing
13 business within the meaning of California Health & Safety Code § 25249.11.

14 39. Defendant MICHAELS manufactures, imports, distributes, and/or offers the
15 PRODUCTS for sale or use in the State of California or implies by its conduct that it
16 manufactures, distributes, imports, and/or offers the PRODUCTS for sale or use in the State of
17 California.

18 40. Defendant MUD PIE, LLC (“MUD PIE”) is a person doing business within the
19 meaning of California Health & Safety Code § 25249.11.

20 41. Defendant MUD PIE manufactures, imports, distributes, and/or offers the
21 PRODUCTS for sale or use in the State of California or implies by its conduct that it
22 manufactures, distributes, imports, and/or offers the PRODUCTS for sale or use in the State of
23 California.

24 42. Defendant TOMMY BAHAMA GROUP, INC. (“TOMMY”) is a person doing
25 business within the meaning of California Health & Safety Code § 25249.11.

26 43. Defendant TOMMY manufactures, imports, distributes, and/or offers the
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it
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1 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 44. Defendant WESTERN DIGITAL CORPORATION (“WESTERN”) is a person
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 45. Defendant WESTERN manufactures, imports, distributes, and/or offers the
6 PRODUCTS for sale or use in the State of California or implies by its conduct that it
7 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
8 California.

9 46. Defendant WILLIAMS-SONOMA, INC. (“WILLIAMS”) is a person doing
10 business within the meaning of California Health & Safety Code § 25249.11.

11 47. Defendant WILLIAMS manufactures, imports, distributes, and/or offers the
12 PRODUCTS for sale or use in the State of California or implies by its conduct that it
13 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
14 California.

15 48. Defendant ZONE ENTERPRISES OF ANAHEIM, LLC (“ZONE”) is a person
16 doing business within the meaning of California Health & Safety Code § 25249.11.

17 49. Defendant ZONE manufactures, imports, distributes and/or offers the PRODUCTS
18 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
19 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

20 50. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
21 doing business within the meaning of California Health & Safety Code § 25249.11.

22 51. 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.

26 52. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
27 doing business within the meaning of California Health & Safety Code § 25249.11.

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1 53. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
2 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
3 the State of California.

4 54. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
5 business within the meaning of California Health & Safety Code § 25249.11.

6 55. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
7 of California and, in some circumstances, may also be manufacturers and/or distributors.

8 56. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiffs, who therefore sue said defendants by their fictitious name pursuant to
10 Code of Civil Procedure § 474. Plaintiffs are informed and believe, and on that basis allege, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein
12 alleged. When ascertained, their true names shall be reflected in an amended complaint.

13 57. AMERICAN, AMICI, AMWAY, ATICO, BALLET, BOSS, CAROLE,
14 GURWITCH, J.C. PENNEY, LEISURE, LEVI, FISHER, MICHAELS, MUD PIE, TOMMY,
15 WESTERN, WILLIAMS, ZONE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
17 to hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

19 58. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
20 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because
21 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
22 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
23 County with respect to the PRODUCTS.

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

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1 PRODUCTS, without the individual purchasers and users first having been provided with a
2 “clear and reasonable warning” regarding such toxic exposures.

3 66. On or about April 25, 2011, sixty-day notices of violation, together with the
4 requisite certificates of merit, were provided to J.C. PENNEY, MICHAELS and various public
5 enforcement agencies stating that as a result of their sales of the PRODUCTS, purchasers and
6 users in the State of California were being exposed to DEHP resulting from the reasonably
7 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
8 been provided with a “clear and reasonable warning” regarding such toxic exposures.

9 67. On or about May 11, 2011, sixty-day notices of violation, together with the
10 requisite certificates of merit, were provided to AMERICAN, AMICI, AMWAY, LEISURE,
11 TOMMY and various public enforcement agencies stating that as a result of their sales of the
12 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
13 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
14 purchasers and users first having been provided with a “clear and reasonable warning” regarding
15 such toxic exposures.

16 68. On or about May 11, 2011, a sixty-day notice of violation, together with the
17 requisite certificate of merit, was provided to FISHER and various public enforcement agencies
18 stating that as a result of FISHER’s sales of the PRODUCTS, purchasers and users in the State of
19 California were being exposed to DBP resulting from the reasonably foreseeable uses of the
20 PRODUCTS, without the individual purchasers and users first having been provided with a
21 “clear and reasonable warning” regarding such toxic exposures.

22 69. On or about August 2, 2011, a sixty-day notice of violation, together with the
23 requisite certificate of merit, was provided to LEVI and various public enforcement agencies
24 stating that as a result of LEVI’s sales of the PRODUCTS, purchasers and users in the State of
25 California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
26 PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures.

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1 70. On or about September 19, 2011, a sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to BALLEET and various public enforcement agencies
3 stating that as a result of BALLEET's sales of the PRODUCTS, purchasers and users in the State
4 of California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
5 PRODUCTS, without the individual purchasers and users first having been provided with a
6 "clear and reasonable warning" regarding such toxic exposures.

7 71. On or about September 21, 2011, sixty-day notices of violation, together with the
8 requisite certificates of merit, were provided to WESTERN, WILLIAMS and various public
9 enforcement agencies stating that as a result of their sales of the PRODUCTS, purchasers and
10 users in the State of California were being exposed to DEHP resulting from the reasonably
11 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
12 been provided with a "clear and reasonable warning" regarding such toxic exposures.

13 72. On or about October 11, 2011, a sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to CAROLE and various public enforcement agencies
15 stating that as a result of the CAROLE's sales of the PRODUCTS, purchasers and users in the
16 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses
17 of the PRODUCTS, without the individual purchasers and users first having been provided with
18 a "clear and reasonable warning" regarding such toxic exposures.

19 73. On or about November 17, 2011, a supplemental sixty-day notice of violation,
20 together with the requisite certificate of merit, was provided to ATICO and various public
21 enforcement agencies stating that as a result of the ATICO's sales of the PRODUCTS,
22 purchasers and users in the State of California were being exposed to DEHP and/or DBP or any
23 combination thereof resulting from the reasonably foreseeable uses of the PRODUCTS, without
24 the individual purchasers and users first having been provided with a "clear and reasonable
25 warning" regarding such toxic exposures.

26 74. On or about November 22, 2011, a sixty-day notice of violation, together with the
27 requisite certificate of merit, were provided to BOSS and various public enforcement agencies
28 stating that as a result of the BOSS' sales of the PRODUCTS, purchasers and users in the State

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

4 75. On or about December 20, 2011, a second supplemental sixty-day notice of
5 violation, together with the requisite certificate of merit, was provided to ATICO and various
6 public enforcement agencies stating that as a result of the ATICO’s sales of the PRODUCTS,
7 purchasers and users in the State of California were being exposed to DEHP and/or DBP or any
8 combination thereof resulting from the reasonably foreseeable uses of the PRODUCTS, without
9 the individual purchasers and users first having been provided with a “clear and reasonable
10 warning” regarding such toxic exposures.

11 76. On or about December 27, 2011, a supplemental sixty-day notice of violation,
12 together with the requisite certificate of merit, was provided to ZONE and various public
13 enforcement agencies stating that as a result of the ZONE’s sales of the PRODUCTS, purchasers
14 and users in the State of California were being exposed to DEHP resulting from the reasonably
15 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
16 been provided with a “clear and reasonable warning” regarding such toxic exposures.

17 77. DEFENDANTS have engaged in the manufacture, importation, distribution and/or
18 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
19 25249.6 and DEFENDANTS’ manufacture, importation, distribution and/or offering of the
20 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
21 continued to occur beyond DEFENDANTS’ receipt of plaintiffs’ sixty-day notice of violation.
22 Plaintiffs further allege and believe that such violations will continue to occur into the future.

23 78. After receipt of the claims asserted in the above-referenced sixty-day notices of
24 violation (paragraphs 64 through 76), the appropriate public enforcement agencies have failed to
25 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
26 65.

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1 79. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
2 use in California by DEFENDANTS contained the LISTED CHEMICALS above the allowable
3 state limits.

4 80. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
6 the LISTED CHEMICALS.

7 81. The LISTED CHEMICALS were present in or on the PRODUCTS in such a way
8 as to expose individuals to the LISTED CHEMICALS through dermal contact, ingestion, and/or
9 inhalation during the reasonably foreseeable use of the PRODUCTS.

10 82. The normal and reasonably foreseeable use of the PRODUCTS has caused and
11 continues to cause consumer and workplace exposures to the LISTED CHEMICALS, as such
12 exposure is defined by 27 California Code of Regulations (“CCR”) § 25602(b).

13 83. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICALS through dermal
15 contact, ingestion, and/or inhalation.

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

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

24 86. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to the LISTED CHEMICALS through dermal
26 contact, ingestion, and/or inhalation resulting from the reasonably foreseeable use of the
27 PRODUCTS, sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
28

1 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
2 remedy at law.

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

6 88. 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, plaintiffs pray 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 alleged
13 herein;

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

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- 3. That the Court grant plaintiffs their 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: March 6, 2012

Respectfully Submitted,

THE CHANLER GROUP

By: 

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