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**ENDORSED
FILED
ALAMEDA COUNTY**

**JUN 14 2012
CLERK OF THE SUPERIOR COURT
Anita Dhir**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

RG12634685

15 ANTHONY E. HELD, PhD., P.E.,

16 Plaintiff,

17 v.

18 ULTA SALON COSMETICS &
19 FRAGRANCE, INC.; and DOES 1-150,
20 inclusive,

21 Defendants.

Case No. _____

**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
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 toiletry cases/bags and cosmetic cases/bags 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 toiletry cases/bags and
8 cosmetic cases/bags that defendants manufacture, distribute, and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the toiletry cases/bags and
11 cosmetic cases/bags that defendants manufacture, distribute, and/or offer for sale to consumers
12 throughout the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the state to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

18 5. On October 24, 2003, California identified and listed DEHP as a chemical known
19 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
20 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.
21 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
22 25249.10(b).) DEHP shall be referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and/or offer for sale toiletry cases/bags and
24 cosmetic cases/bags containing excessive levels of the LISTED CHEMICAL including, but not
25 limited to, the *JLB Cosmetics 7pc Travel Set, #10267 (#8 79596 00444 6)*, the *Jasmine La Belle*
26 *Cosmetics Crystal Nail Filer With Pouch (#8 79596 00396 8)*, and the *Jasmine La Belle*
27 *Cosmetics 5-pc Nail Kit (#8 79596 00407 1)*. All such toiletry cases/bags and cosmetic
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1 cases/bags containing the LISTED CHEMICAL shall hereinafter be referred to as the
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers and/or other individuals in the State of
4 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
5 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoyment
6 of such conduct as well as civil penalties for each such violation.

7 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
8 and permanent injunctive relief to compel defendants to provide purchasers or users of the
9 PRODUCTS with the required warning regarding the health hazards of the LISTED
10 CHEMICAL. (Cal. Health & Safety Code § 25249.7(a).)

11 9. Plaintiff also seeks civil penalties against defendants for their violations of
12 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

13 **PARTIES**

14 10. Plaintiff, ANTHONY HELD, PH.D., P.E., is a citizen of the State of California
15 who is dedicated to protecting the health of California citizens through the elimination or
16 reduction of toxic exposures from consumer products; he brings this action in the public interest
17 pursuant to California Health & Safety Code § 25249.7(d).

18 11. Defendant ULTA SALON COSMETICS & FRAGRANCE, INC. (“ULTA”) is a
19 person in the course of doing business within the meaning of California Health & Safety Code §
20 25249.11(c).

21 12. Defendant ULTA manufactures, distributes, and/or offers the PRODUCTS for
22 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,
23 and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
25 persons in the course of doing business within the meaning of California Health & Safety Code
26 § 25249.11(c).

27 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
28 designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of California Health & Safety Code §
5 25249.11(c).

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
10 the course of doing business within the meaning of California Health & Safety Code §
11 25249.11(c).

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

14 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
16 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
17 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
18 herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. ULTA, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
21 “DEFENDANTS.”

22 VENUE AND JURISDICTION

23 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
24 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, and
25 because one or more instances of wrongful conduct occurred, and continue to occur, in the
26 County of Alameda, and/or because DEFENDANTS conducted, and continue to conduct,
27 business in this County with respect to the PRODUCTS.
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1 purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding such toxic exposures.

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

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

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

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

17 32. 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 33. 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 Title 27 CCR § 25602(b).

23 34. 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 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
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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 36. 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 37. 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 38. 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 39. 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;

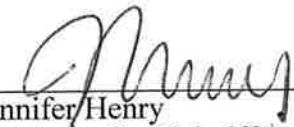
28 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

Dated: June 13, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 

Jennifer Henry
Attorneys for Plaintiff
ANTHONY E. HELD, PHD., P.E.