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FILED

APR 02 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, Ph.D., P.E.,

16 Plaintiff,

17 v.

18 MBM INDUSTRIES, INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. ciV 1201544

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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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 bracelets sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP
8 present in or on certain bracelets that defendants manufacture, import, distribute, and/or offer
9 for sale to consumers throughout the state of California.

10 3. High levels of DEHP are commonly found in and on the bracelets that defendants
11 manufacture, import, distribute, and/or offer for sale to consumers throughout the state of
12 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).)

23 6. Defendants manufacture, import, distribute, and/or offer for sale bracelets
24 containing excessive levels of DEHP including, but not limited to, *Rubber Buckle-Band "Say*
25 *It" Bracelet, Item BSHOP (#7 82993 01361 7)*. All such bracelets containing DEHP shall
26 hereinafter be referred to as the "PRODUCTS."

27 7. Defendants' failure to warn consumers and/or other individuals in the state of
28 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*

1 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive
2 harm in conjunction with Defendants' manufacturing, importation, distribution , and/or sale of
3 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
4 conduct as well as civil penalties for each such violation.

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

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

11 **PARTIES**

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

16 11. Defendant MBM INDUSTRIES, INC. ("MBM") is a person in the course of
17 doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant MBM 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 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
23 persons in the course of doing business within the meaning of California Health & Safety Code
24 § 25249.11.

25 14. MANUFACTURER DEFENDANTS engage in the process of researching,
26 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
27 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
28 manufacturing, one or more of the PRODUCTS offered for sale or use in the state of California.

1 in all causes except those given by statute to other trial courts.” The statute under which this
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
5 or association that is a citizen of the state of California, has sufficient minimum contacts in the
6 state of California, or otherwise purposefully avails itself of the California market.

7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

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

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

21 27. On or about October 11, 2011, a sixty-day notice of violation, together with the
22 requisite certificate of merit, was provided to MBM and various public enforcement agencies
23 stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
24 the state of California were being exposed to DEHP resulting from the reasonably foreseeable
25 use of the PRODUCTS, without the individual purchasers and users first having been provided
26 with a “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the manufacture, import, distribution, and/or
28 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §

1 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
2 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has
3 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.
4 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

8 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
9 use in California by DEFENDANTS contained DEHP in an amount above the allowable state
10 limits.

11 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
12 imported, distributed, and/or offered for sale or use in California contained DEHP.

13 32. DEHP was present in or on the PRODUCTS in such a way as to expose
14 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
15 use of the PRODUCTS.

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
17 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
18 § 25602(b).

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

21 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
22 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
23 in the manufacture, import, distribution, and/or offering of the PRODUCTS for sale or use to
24 individuals in the state of California.

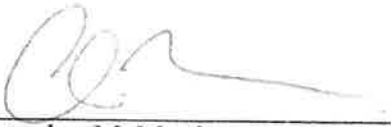
25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the state of California who were, or who could become
27 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
28 use of the PRODUCTS.

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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: April 2, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Christopher M. Martin
Attorney for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.