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ENDORSED

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David H. ...
County of Santa Clara, California
By: _____ Ramirez

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

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

16 Plaintiff,

17 v.

18 SMILES FASHION CORPORATION; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. **112CV230221**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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, in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical
5 found in belts sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on the belts
8 manufactured, distributed, and/or offered for sale or use to consumers throughout the state of
9 California.

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

12 4. Under The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
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 pursuant to
18 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
19 became subject to the “clear and reasonable warning” requirements of the Act one year later on
20 October 24, 2004. (Cal. Code Regs., tit. 27, § 27001(c); Cal. Health & Safety Code §§ 25249.8
21 & 25249.10(b).) DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and/or sell belts that contain excessive levels
23 of DEHP, including, but not limited to, those offered in connection with the *Mlle Gabrielle*
24 *Dress with Belt, Style 72120*. All such belts containing DEHP are referred to collectively
25 hereinafter as “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’
28

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 violation. (Cal. Health & Safety Code
3 § 25249.7(a) & (b)(1).)

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

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

10 **PARTIES**

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

15 11. Defendant SMILES FASHION CORPORATION ("SMILES") is a person in the
16 course of doing business within the meaning of California Health & Safety Code § 25249.11.

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

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of California Health & Safety Code
22 § 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of researching,
24 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
25 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
26 manufacturing, one or more of the PRODUCTS 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 or
5 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 ...” (*Id.*)

21 27. On or about April 25, 2012, plaintiff’s sixty-day notice of violation, together with
22 the requisite certificate of merit, was provided to SMILES and certain requisite public
23 enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS
24 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
25 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable use 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, as required by Proposition 65.
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1 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
4 notice of violation. Plaintiff further alleges that DEFENDANTS' violations are ongoing and
5 continuous in nature and, as such, will continue to occur in the future.

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

9 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
11 allowable state limits, such that they require a "clear and reasonable" Proposition 65 warning.

12 31. DEFENDANTS knew or should have known that the PRODUCTS they
13 manufactured, distributed, and/or offered for sale or use in California contain the LISTED
14 CHEMICAL.

15 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
16 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

17 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
18 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
19 defined by Cal. Code Regs., tit. 27, § 25602(b).

20 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
22 and/or ingestion.


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

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

Dated: August 9, 2012

Respectfully Submitted,
THE CHANLER GROUP

By: 
Brian C. Johnson
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.