

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

FILED

APR 24 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Yarborough, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 ALL ACCESS APPAREL, INC.; and DOES
18 1-150, inclusive,

19 Defendants.

) Case No. CIV 1301751

) **COMPLAINT FOR CIVIL PENALTIES
) AND INJUNCTIVE RELIEF**

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

20
21
22
23
24
25
26
27
28
BY FAX

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 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 belts
8 manufactured, distributed, and 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 belts that defendants
11 manufacture, distribute, and 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 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of
14 doing business shall knowingly and intentionally expose any individual to a chemical known to
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
16 warning to such individual . . ." Health & Safety Code § 25249.6.

17 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
18 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
19 subject to the "clear and reasonable warning" requirements of the act one year later on October
20 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
21 25249.10(b).

22 6. Defendants manufacture, distribute, and sell belts that contain DEHP in levels that
23 require a warning under Proposition 65 including, but not limited to, the *Self Esteem Shirt with*
24 *Belt, #414314YI (#6 37677 66627 9)*. All such belts containing DEHP are referred to
25 collectively hereinafter as "PRODUCTS."

26 7. Although defendants expose infants, children, and other people to DEHP in the
27 PRODUCTS, defendants provide no warnings about the hazards associated with these DEHP
28

1 exposures. Defendants' failures to warn consumers and other individuals in the State of
2 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
3 *seq.* about their exposures to DEHP in conjunction with defendants' distribution, importation,
4 manufacture, and/or sales of the PRODUCTS, is a violation of Proposition 65, and subjects
5 defendants to enjoinder of such conduct as well as civil penalties for each violation. (Health
6 & Safety Code § 25249.7(a) & (b)(1).)

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

11 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
12 penalties against defendants for their violations of Proposition 65.

13 PARTIES

14 10. Plaintiff ANTHONY E. 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; and he brings this action in the public
17 interest pursuant to Health and Safety Code section 25249.7(d).

18 11. Defendant ALL ACCESS APPAREL, INC. ("ALL ACCESS") is a person in the
19 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

23 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
24 persons in the course of doing business within the meaning of Health and Safety Code section
25 25249.11.

26 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
27 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
28

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

8 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 20. ALL ACCESS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as "DEFENDANTS."

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because one or more instances of wrongful conduct occurred, and continue to occur, in Marin
24 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 county with respect to the PRODUCTS.

26
27
28

1 first having been provided with a “clear and reasonable warning” regarding such toxic
2 exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
4 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
6 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
7 and will continue to occur in the future.

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

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain DEHP in amounts above the allowable state limits, such
13 that they require a “clear and reasonable” warning under Proposition 65.

14 31. DEFENDANTS knew or should have known that the PRODUCTS they
15 manufacture, distribute, and offer for sale or use in California contain DEHP.

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

18 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
19 continue to cause, consumer products exposures and occupational exposures to DEHP, as such
20 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
22 of the PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

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


27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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 24, 2013

Respectfully Submitted,
THE CHANLER GROUP

By: 

Troy C. Bailey
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.