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FILED

APR 9 - 2014

WIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chats, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,) Case No. CIV 1301751
)
Plaintiff,)
)
v.) **FIRST AMENDED COMPLAINT FOR**
) **CIVIL PENALTIES AND INJUNCTIVE**
) **RELIEF**
ALL ACCESS APPAREL, INC.; and DOES)
1-150, inclusive,) (Health & Safety Code. § 25249.6 *et seq.*)
)
Defendants.)

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 and
8 headphones with vinyl/PVC wire containing DEHP manufactured, distributed, and offered for
9 sale or use to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on belts and headphones with
11 vinyl/PVC wires containing DEHP that defendants manufacture, distribute, and offer for sale to
12 consumers throughout the State of California.

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

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

23 6. Defendants manufacture, distribute, and sell belts that contain DEHP in levels that
24 require a warning under Proposition 65 including, but not limited to, the *Self Esteem Shirt with*
25 *Belt, #414314YI (#6 37677 66627 9) “BELT PRODUCTS”*.

1 14. ALL ACCESS manufactures, distributes, and/or offers the PRODUCTS for sale or
2 use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
3 offers the PRODUCTS for sale or use in the State of California.

4 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
5 persons in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
9 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
10 California.

11 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
15 in the State of California.

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

18 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California.

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

25 22. ALL ACCESS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
27 referred to as “DEFENDANTS.”
28

1 **VENUE AND JURISDICTION**

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

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

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that is a citizen of the state of California, has sufficient minimum contacts in the
14 state of California, and/or otherwise purposefully avails itself of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

19 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 25, inclusive.

21 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
22 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
23 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
24 harm.”

25 28. Proposition 65 states, “[n]o person in the course of doing business shall
26 knowingly and intentionally expose any individual to a chemical known to the state to cause
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

3 29. On April 25, 2012, plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to ALL ACCESS and certain public enforcement
5 agencies stating that, as a result of DEFENDANTS’ sales of the BELT PRODUCTS containing
6 DEHP purchasers and users in the state of California were being exposed to DEHP resulting
7 from the reasonably foreseeable uses of the BELT PRODUCTS, without the individual
8 purchasers and users first having been provided with a “clear and reasonable warning”
9 regarding such toxic exposures, as required by Proposition 65 (“Initial Notice”).

10 30. On November 15, 2013, plaintiff’s supplemental sixty-day notice of violation,
11 together with the requisite certificate of merit, was provided to ALL ACCESS and certain
12 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
13 PRODUCTS containing DEHP purchasers and users in the state of California were being
14 exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without
15 the individual purchasers and users first having been provided with a “clear and reasonable
16 warning” regarding such toxic exposures, as required by Proposition 65 (“Supplemental
17 Notice”).

18 31. The Initial Notice and the Supplemental Notice shall hereinafter be collectively
19 referred to as the “Notices”.

20 32. DEFENDANTS have engaged in the manufacture, distribution, and offering of
21 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
22 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notices.
23 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to
24 occur in the future.

25 33. After receiving the claims asserted in the Notices, the appropriate public
26 enforcement agencies have failed to commence and diligently prosecute a cause of action
27 against DEFENDANTS under Proposition 65.
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1 34. The PRODUCTS manufactured, distributed, and offered for sale or use in
2 California by DEFENDANTS contain DEHP in amounts above the allowable state limits, such
3 that they require a “clear and reasonable” warning under Proposition 65.

4 35. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, distribute, and offer for sale or use in California contain DEHP.

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

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

11 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
12 of the PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

13 39. DEFENDANTS intended that such exposures to DEHP from the reasonably
14 foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
15 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
16 individuals in the state of California.

17 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those
18 consumers and other individuals in the State of California who were or who would become
19 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable
20 uses of the PRODUCTS.

21 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
22 directly by California voters, individuals exposed to DEHP through dermal contact and/or
23 ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by
24 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
25 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
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