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ENDORSED
FILED
ALAMEDA COUNTY

APR 11 2013

CLERK OF THE SUPERIOR COURT
By M Hayes Deputy

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 NEW ASHLEY STEWART, INC.; and DOES
20 1-150, inclusive,

21 Defendants.

Case No.

RG1367517 |

**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 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 vinyl/PVC wristlets and vinyl/PVC 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 vinyl/PVC
8 wristlets and vinyl/PVC belts manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC wristlets
11 and vinyl/PVC belts that defendants manufacture, distribute, and offer for sale to consumers
12 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). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
24 wristlets and vinyl/PVC belts containing the LISTED CHEMICAL without a warning,
25 including, but not limited to, the *Snake Skin Studded Wristlet, Style: TLHN817, SKU*
26 *#200765193 (#4 02007 65193 1)* and *2-Pack Studded Buckle Belt, Style: WNE18803X, SKU*
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1 #200766588 (#4 02007 66588 4). All such vinyl/PVC wristlets and vinyl/PVC belts containing
2 the LISTED CHEMICAL are referred to collectively hereinafter as "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in the State of
4 California about their exposure to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
6 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
7 & (b)(1).

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

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

14 **PARTIES**

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

19 11. Defendant NEW ASHLEY STEWART, INC. ("NEW ASHLEY") is a person in
20 the course of doing business within the meaning of Health and Safety Code section 25249.11.

21 12. NEW ASHLEY manufactures, imports, distributes, sells, and/or offers the
22 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
23 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
24 State of California.

25 13. Defendants DOES 1-150, which manufacture, distribute, sell, and/or offer the
26 PRODUCTS for sale in the State of California, are each persons in the course of doing business
27 within the meaning of Health and Safety Code section 25249.11(b). At this time, the true names
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1 and capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,
2 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure
3 section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
4 fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
5 ascertained, their true names and capacities shall be reflected in an amended complaint.

6 14. NEW ASHLEY and DOES 1-150 shall, where appropriate, collectively be
7 referred to as “DEFENDANTS.”

8 **VENUE AND JURISDICTION**

9 15. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
10 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
11 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
12 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
13 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
14 PRODUCTS.

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

19 17. The California Superior Court has jurisdiction over DEFENDANTS based on
20 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
21 association that is a citizen of the State of California, has sufficient minimum contacts in the
22 State of California, and/or otherwise purposefully avails itself of the California market.
23 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
24 California courts consistent with traditional notions of fair play and substantial justice.

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1 **FIRST CAUSE OF ACTION**

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

3 18. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 17, inclusive.

5 19. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

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

13 21. On October 26, 2012, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to NEW ASHLEY and certain public enforcement
15 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
16 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
17 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
18 without the individual purchasers and users first having been provided with a “clear and
19 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

25 23. After receiving plaintiff’s sixty-day notice of violation, 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 24. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
2 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
3 a “clear and reasonable” warning under Proposition 65.

4 25. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
6 CHEMICAL.

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

10 27. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
11 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
12 defined by California Code of Regulations title 27, section 25602(b).

13 28. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
14 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
15 and/or ingestion.

16 29. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
17 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
18 accidental participation in the manufacture, importation, distribution, sale, and offering of the
19 PRODUCTS for sale or use to individuals in the State of California.

20 30. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in the State of California who were or who would become
22 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
23 reasonably foreseeable uses of the PRODUCTS.

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

3 32. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
4 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
5 for each violation.

6 33. As a consequence of the above-described acts, Health and Safety Code
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

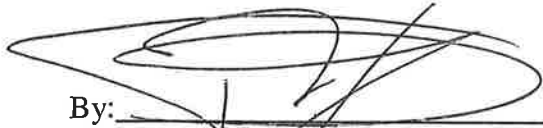
13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a “clear and
16 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
17 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

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

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

20 Dated: April 11, 2013

21 Respectfully Submitted,
22 THE CHANLER GROUP

23 By: 
24 John C. Mayo
25 Attorneys for Plaintiff
26 ANTHONY HELD
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