

ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Oliver Baker Deputy

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

ANTHONY E. HELD, PhD., P.E.,

Plaintiff,

v.

SHELBY GROUP INTERNATIONAL, INC.;
and DOES 1-150, inclusive,

Defendants.

Case No. _____

RG13703341

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD., PhD., 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 lead, a toxic chemical found in vinyl/PVC
5 rainwear.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about the risk of exposure to lead present in and on the vinyl/PVC
8 rainwear manufactured, distributed, and offered for sale or use to consumers throughout the
9 State of California.

10 3. Detectable levels of lead are commonly found in and on the vinyl/PVC rainwear
11 that defendants manufacture, distribute, and offer for sale to consumers throughout the State of
12 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 February 27, 1987, California identified and listed
19 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
20 subject to the "clear and reasonable warning" requirements of the act one year later on February
21 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8. Lead is
22 referred to hereinafter as the "LISTED CHEMICAL."

23 6. Defendants manufacture, distribute, import, sell, and/or offer for sale vinyl/PVC
24 rainwear containing lead as follows:

25 a. Defendants manufacture, distribute, import, sell, and/or offer for sale
26 vinyl/PVC rainwear containing lead without a warning, including, but not limited to, the
27 *River City Classic 200 Series Suit, Style No. 2403.*
28

7. All such vinyl/PVC rainwear containing lead, described above in paragraph 6(a), shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

PARTIES

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

12. Defendant SHELBY GROUP INTERNATIONAL, INC. ("SHELBY") is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13. SHELBY manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

21. SHELBY, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as “DEFENDANTS.”

VENUE AND JURISDICTION

22. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda County, and/or because

1 DEFENDANTS conducted, and continue to conduct, business in this county with respect to the
2 PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 24, inclusive.

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

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

25 28. On July 24, 2013, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to SHELBY and certain public enforcement agencies
27 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
28

1 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
2 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the
3 individual purchasers and users first having been provided with a “clear and reasonable
4 warning” regarding such toxic exposures, as required by Proposition 65.

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

10 30. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
11 enforcement agencies have failed to commence and diligently prosecute a cause of action
12 against DEFENDANTS under Proposition 65.

13 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL such that they require
15 a “clear and reasonable” warning under Proposition 65.

16 32. DEFENDANTS knew or should have known that the PRODUCTS they
17 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
18 CHEMICAL.

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

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

25 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

28

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

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

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

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

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

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and

1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
2 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

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

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6 Dated: November 15, 2013

Respectfully Submitted,
THE CHANLER GROUP

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8 By: 
9 Jonathan A. Bornstein
10 Attorneys for Plaintiff
11 ANTHONY E. HELD., PhD., P.E.
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