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ALAMEDA COUNTY

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Attorneys for Plaintiffs  
ANTHONY E. HELD, PH.D., P.E. and  
MARK MOORBERG

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

ANTHONY E. HELD, PH.D., P.E. and  
MARK MOORBERG,

Plaintiffs,

v.

AMERICAN CRAFTS, L.C.; and DOES 1-  
150, inclusive,

Defendants.

Case No. RG14-733570

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiffs  
3 ANTHONY E. HELD, PH.D., P.E., and MARK MOORBERG in the public interest of the  
4 citizens of the State of California to enforce the People’s right to be informed about exposures  
5 to di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical that is found in vinyl/PVC craft  
6 embellishments and vinyl/PVC pen pouches that are sold in California.

7 2. By this First Amended Complaint, plaintiffs seeks to remedy defendants’  
8 continuing failure to warn California citizens about the risks of exposures to DEHP present in  
9 and on the vinyl/PVC craft embellishments and vinyl/PVC pen pouches manufactured,  
10 distributed, sold, and offered for sale or use to consumers throughout the State of California.

11 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC craft  
12 embellishments and vinyl/PVC pen pouches that defendants import, manufacture, distribute,  
13 ship, sell and/or offer for sale to consumers throughout the State of California.

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

19 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a  
20 chemical that is known to cause birth defects or other reproductive harm. DEHP became  
21 subject to the “clear and reasonable warning” requirements of the act one year later on October  
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
23 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”  
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1           6. Defendants manufacture, distribute, import, sell, and offer for sale without  
2 warning in California, vinyl/PVC craft embellishments containing the LISTED CHEMICAL,  
3 including, but not limited to, the *Dear Lizzy+American Crafts Adhesive Layered*  
4 *Embellishments Honeysuckle*, #78040, (UPC No. 7 18813 78040 7).

5           7. Defendants manufacture, distribute, import, sell, and offer for sale without  
6 warning in California, vinyl/PVC pen pouches containing the LISTED CHEMICAL, including,  
7 but not limited to, *the Artist's Loft Illustration Pens*, # 179838 #89655-2011-03, (UPC No. 4  
8 00100 83113 7).

9           8. All the above vinyl/PVC craft embellishments and vinyl/PVC pen pouches  
10 containing the LISTED CHEMICAL are referred to collectively hereinafter as the  
11 "PRODUCTS."

12           9. Defendants' failure to warn consumers and other individuals in California of the  
13 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants'  
14 sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65,  
15 and subject defendants to enjoinder of such conduct, as well as civil penalties for each  
16 violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

21           11. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
22 penalties against defendants, and each of them, for each violation of Proposition 65.

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**PARTIES**

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2           12. Plaintiffs ANTHONY E. HELD, PH.D, P.E. and MARK MOORBERG are  
3 citizens of the State of California who are dedicated to protecting the health of California  
4 citizens through the elimination or reduction of harmful exposures to toxic chemicals from  
5 consumer products. Plaintiffs brings this action in the public interest pursuant to Health and  
6 Safety Code section 25249.7(d).

7           13. Defendant American Crafts, L.C. (“AMERICAN CRAFTS”) is a person in the  
8 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
9 25249.11.

10           14. AMERICAN CRAFTS manufactures, imports, distributes, sells, and/or offers the  
11 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
12 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
13 State of California.

14           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
15 person in the course of doing business within the meaning of Health and Safety Codes sections  
16 25249.6 and 25249.11.

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

21           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
22 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
23 and 25249.11.

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

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1           30. On October 24, 2014, MARK MOORBERG's sixty-day notice of violation,  
2 together with the requisite certificate of merit, was provided to AMERICAN CRAFTS and the  
3 requisite public enforcement agencies stating that, as a result of DEFENDANTS' sales of the  
4 vinyl/PVC pen pouches containing the LISTED CHEMICAL, workers, consumers, and other  
5 individuals in the State of California are being exposed to the LISTED CHEMICAL resulting  
6 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers  
7 and users first having received the "clear and reasonable warning" as required by Proposition  
8 65.

9           31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
10 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
11 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
12 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and  
13 continuous in nature, and will continue to occur in the future.

14           32. After receiving the plaintiffs' sixty-day notices of violation, no public  
15 enforcement agencies has commenced and diligently prosecuted a cause of action against  
16 DEFENDANTS under Proposition 65 for any violation alleged in the Notices.

17           33. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
18 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
19 reasonably foreseeable uses of these products result in exposures that require a "clear and  
20 reasonable" warning under Proposition 65.

21           34. DEFENDANTS knew or should have known that the PRODUCTS they  
22 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
23 CHEMICAL.

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

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

4           37. DEFENDANTS know that the normal and reasonably foreseeable uses of the  
5 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or  
6 ingestion.

7           38. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
8 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
9 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
10 use to individuals in the State of California.

11           39. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and other individuals in California who have been, or will be, exposed to the  
13 LISTED CHEMICAL.

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

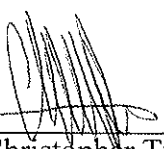
6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a “clear and  
9 reasonable warning” as defined by title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

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

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

13 Dated: April 1, 2015

14 Respectfully Submitted,  
15 THE CHANLER GROUP

16   
17 By: \_\_\_\_\_  
18 Christopher Tuttle  
19 Attorneys for Plaintiff  
20 ANTHONY E. HELD, PH.D., P.E.  
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