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ENDORSED
FILED
ALAMEDA COUNTY

OCT - 2 2009

CLERK OF THE SUPERIOR COURT
By _____ Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 CLAIRE'S BOUTIQUES, INC.; CLAIRE'S
17 STORES, INC.; and DOES 1 through 150,
18 inclusive,

19 Defendants.

Case No. RG09477481

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD,
3 PH.D., P.E., in the public interest of the citizens of the State of California, to enforce the People's
4 right to be informed of the presence of Di(2-ethylhexyl)phthalate (a toxic chemical) found in
5 children's vinyl bags manufactured and sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
7 California citizens about their exposure to Di(2-ethylhexyl) phthalate (DEHP) present in or on
8 certain children's vinyl bags that defendants manufacture, distribute, and/or offer for sale to
9 consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on children's vinyl bags that
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
12 California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code §25249.6 *et seq.* (Proposition 65), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual. . . ." (*Cal. Health & Safety Code §25249.6.*)

18 5. On October 24, 2003, California identified and listed DEHP as a chemical known to
19 cause birth defects and other reproductive harm. DEHP became subject to the warning requirement
20 one year later and was therefore subject to the "clear and reasonable warning" requirements of
21 Proposition 65, beginning on October 24, 2004. (*CCR §12000(c); Cal. Health & Safety Code*
22 *§25249.8.*) DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

23 6. Defendants manufacture and sell children's vinyl bags containing DEHP including,
24 but not limited to, *coin bag, kittens, #39001-3, coin bag, monkeys, #16602-5, coin bag, kitten,*
25 *#16634-8 and Claire's camera set, #72288-4,* which contain excessive levels of the LISTED
26 CHEMICAL. All such children's vinyl bags containing the LISTED CHEMICAL shall hereinafter
27 be referred to as the "PRODUCTS."
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1 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
2 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
5 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code §25249.6 has continued to occur beyond
7 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
8 believes that such violations will continue to occur into the future.

9 30. After receipt of the claims asserted in the sixty-day notice of violation and the
10 supplemental sixty-day notice of violation, the appropriate public enforcement agencies have failed
11 to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
12 65.

13 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
14 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.

15 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
17 CHEMICAL.

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

21 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
23 by 22 CCR §12601(b).

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

27 36. DEFENDANTS, and each of them, intended that such exposures to the LISTED
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1 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
2 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
3 of PRODUCTS to individuals in the State of California.

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

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

13 39. As a consequence of the above-described acts, DEFENDANTS, and each of them,
14 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
15 Health & Safety Code §25249.7(b).

16 40. As a consequence of the above-described acts, California Health & Safety Code
17 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

18 41. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
19 set forth hereinafter.

20 **PRAYER FOR RELIEF**

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

22 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
23 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
24 violation alleged herein;

25 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
26 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
27 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
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reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to the LISTED CHEMICAL;

- 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: October 2, 2009

Respectfully Submitted,

HIRST & CHANLER LLP



Christopher M. Martin
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.