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ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

CGC 13-534940

ANTHONY E. HELD, Ph.D., P.E.  
Plaintiff,  
v.  
MTD PRODUCTS, INC.; ARNOLD  
CORPORATION; and DOES 1-150, inclusive,  
Defendants.

Case No. \_\_\_\_\_  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code § 25249.5 *et seq.*)

NATURE OF THE ACTION

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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 health hazards caused by exposures to di(2-  
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in the vinyl/PVC grips of tools sold by  
6 defendants in California.

7           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn California citizens and other individuals about the risks of exposures to DEHP present in  
9 and on the vinyl/PVC grips of tools manufactured, distributed, and offered for sale or use to  
10 consumers and other individuals throughout the State of California.

11           3.     Detectable levels of DEHP are commonly found in and on the vinyl/PVC grips of  
12 tools that defendants manufacture, distribute, and offer for sale to consumers and other  
13 individuals 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 identified and listed DEHP pursuant to  
20 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP  
21 became subject to the “clear and reasonable warning” requirement one year later on October 24,  
22 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
23 DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24           6.     Defendants manufacture, distribute, import, sell, and offer for sale without  
25 warning in California, tools with vinyl/PVC grips containing the LISTED CHEMICAL,  
26 including, but not limited to, the *Arnold Blade Removal Tool*, #490-850-0005(UPC No. 0 37049  
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1 94510 8). All tools with vinyl/PVC grips containing the LISTED CHEMICAL are referred to  
2 collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and other workers, consumers, and other  
4 individuals in the State of California of the health hazards associated with exposures to the  
5 LISTED CHEMICAL in conjunction with defendants' sales of the PRODUCTS are violations  
6 of Proposition 65, and subject defendants, and each of them, to enjoinder of such conduct as  
7 well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (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 associated with exposures  
11 to the LISTED 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 E. HELD, PH.D., P.E. is a citizen of the State of California  
16 who is dedicated to protecting the health of California citizens through the elimination or  
17 reduction of toxic exposures from consumer products; and he brings this action in the public  
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant MTD PRODUCTS, INC. ("MTD") is a person in the course of doing  
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. Defendant ARNOLD CORPORATION ("ARNOLD") is a person in the course of  
25 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

4           15.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
5 person in the course of doing business within the meaning of Health and Safety Code sections  
6 25249.6 and 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 sections 25249.6  
13 and 25249.11.

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

17           19.    Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
18 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
19 and 25249.11.

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

22           21.    At this time, the true names of defendants DOES 1 through 150, inclusive, are  
23 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
24 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
25 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
26 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

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

7 29. On July 24, 2013, plaintiff served a sixty-day notice of violation, together with the  
8 requisite certificate of merit, on MTD, ARNOLD, and certain public enforcement agencies  
9 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
10 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED  
11 CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without the  
12 individual purchasers and users first having been provided with a “clear and reasonable  
13 warning” regarding the harms associated with such exposures, as required by Proposition 65.

14 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
15 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
16 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
17 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
18 the future.

19 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
20 public enforcement agencies have commenced and diligently prosecuted a cause of action  
21 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
22 subject of plaintiff’s notice of violation.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
24 offer for sale or use in California, cause exposures to the LISTED CHEMICAL as a result of the  
25 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and  
26 endured by consumers and other individuals in California are not exempt from the “clear and  
27 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.  
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1           33. DEFENDANTS have knowledge that the PRODUCTS they manufacture, import,  
2 distribute, sell, and offer for sale in California contain the LISTED CHEMICAL.

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

5           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
6 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of  
7 the California Code of Regulations, section 25602(b).

8           36. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
9 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
10 and/or ingestion.

11           37. DEFENDANTS intend that exposures to the LISTED CHEMICAL from the  
12 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental  
13 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS  
14 for sale or use to consumers and other individuals in California.

15           38. DEFENDANTS have failed to provide a "clear and reasonable warning" to those  
16 consumers and other individuals in California who are or who will be exposed to the LISTED  
17 CHEMICAL through dermal contact and/or ingestion resulting from their use of the  
18 PRODUCTS.

19           39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
20 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
21 contact or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell  
22 without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer,  
23 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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