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FILED

2014 MAY -2 A 9 15

CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA  
BY: A.J. GAMBOL  
CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MECHANICAL SERVANTS, INC.; and )  
DOES 1-150, inclusive, )  
 )  
Defendants. )

Case No. **C<sup>v</sup>14-00869**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 34

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.  
3 HELD, PH.D., P.E. ("HELD") in the public interest of the citizens of the State of California to  
4 enforce the People's right to be informed of the presence of di(2-ethylhexyl)phthalate  
5 ("DEHP"), a toxic chemical found in tools with vinyl/PVC grips sold in California.

6 2. By this Complaint, plaintiff HELD seeks to remedy defendants' continuing  
7 failures to warn California citizens about the risks of exposures to DEHP present in and on the  
8 tools with vinyl/PVC grips manufactured, distributed, sold, and offered for sale or use to  
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are found in and on the grips of tools that defendants  
11 manufacture, distribute, sell, and offer for sale to consumers, throughout the State of California.  
12 Individuals in California are exposed to DEHP in the PRODUCTS through various routes of  
13 exposure: (i) through dermal exposure when DEHP from the tools with vinyl/PVC grips  
14 accumulates in ambient particles that are subsequently touched by such individuals; and (ii)  
15 through ingestion when such particles are brought into contact with the mouth.

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

21 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
22 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
23 subject to the "clear and reasonable warning" requirements one year later on October 24, 2004.  
24 (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

25 6. Defendant MECHANICAL SERVANTS, INC. manufactures, distributes,  
26 imports, sells, and/or offers for sale in California tools with vinyl/PVC grips containing DEHP  
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1 including, but not limited to, the *Convenience Valet 6" Slip Joint Plier, UPC #0 94187 03054 7.*

2 All such tools with vinyl/PVC grips are hereinafter collectively referred to as "PRODUCTS."

3 7. Although defendants expose individuals to DEHP in the PRODUCTS, defendants  
4 provide no warnings about the birth defect and other reproductive hazards associated with these  
5 DEHP exposures. Defendants' failures to warn consumers and other individuals in the State of  
6 California not covered by California's Occupational Health Act, Labor Code § 6300 et seq.  
7 about their exposures to DEHP in conjunction with defendants' sales of the PRODUCTS, is a  
8 violation of Proposition 65, and subjects defendants to enjoinder of such conduct as well as  
9 civil penalties for each violation. (Health & Safety Code § 25249.7(a) & (b)(1).)

10 8. As a result of defendants' violations of Proposition 65, HELD seeks preliminary  
11 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
12 PRODUCTS with the required warning regarding the health hazards of DEHP in the  
13 PRODUCTS. (Health & Safety Code § 25249.7(a).)

14 9. Pursuant to Health and Safety Code Section 25249.7(b), HELD also seeks civil  
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

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

21 11. Defendant MECHANICAL SERVANTS, INC. ("MECHANICAL") is a person in  
22 the course of doing business within the meaning of Health and Safety Code Section 25249.11.

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

1           13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
2 person in the course of doing business within the meaning of Health and Safety Code sections  
3 25249.6 and 25249.11.

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

8           15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
10 and 25249.11.

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

14           17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
16 and 25249.11.

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

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

25           20. MECHANICAL and defendants DOES 1-150 are collectively referred to herein  
26 as "Defendants."

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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in Contra Costa County Superior Court, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because HELD seeks civil penalties against Defendants, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in Contra Costa County, and/or because  
6 Defendants conducted, and continue to conduct, business in this county with respect to the  
7 PRODUCTS.

8 22. The California Superior Court has jurisdiction over this action pursuant to  
9 California Constitution Article VI, Section 10, which grants the Superior Court "original  
10 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
11 which this action is brought does not specify any other basis of subject matter jurisdiction.

12 23. The California Superior Court has jurisdiction over Defendants based on HELD's  
13 information and good faith belief that each Defendant is a person, firm, corporation or  
14 association that is a citizen of the State of California, has sufficient minimum contacts in the  
15 State of California, and/or otherwise purposefully avails itself of the California market.  
16 Defendants' purposeful availment of California as a marketplace for the PRODUCTS renders  
17 the exercise of personal jurisdiction by California courts over Defendants consistent with  
18 traditional notions of fair play and substantial justice.

19 **FIRST CAUSE OF ACTION**

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

21 24. HELD realleges and incorporates by reference, as if fully set forth herein,  
22 Paragraphs 1 through 23, inclusive.

23 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
24 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be  
25 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
26 harm."  
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1           26. Proposition 65 states, “[n]o person in the course of doing business shall  
2 knowingly and intentionally expose any individual to a chemical known to the state to cause  
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
4 individual . . .” (Health & Safety Code § 25249.6.)

5           27. On August 16, 2013, HELD’s sixty-day notice of violation, together with the  
6 requisite certificate of merit, was provided to MECHANICAL and certain public enforcement  
7 agencies stating that, as a result of Defendants’ sales of the PRODUCTS containing DEHP,  
8 purchasers and users in the State of California were being exposed to DEHP resulting from their  
9 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
10 first having been provided with a “clear and reasonable warning” regarding such toxic  
11 exposures, as required by Proposition 65.

12           28. Defendants have engaged in the manufacture, importation, distribution, sale, and  
13 offering of the PRODUCTS for sale or use in violation of Health and Safety Code Section  
14 25249.6, and Defendants’ violations have continued to occur beyond their receipt of HELD’s  
15 sixty-day notice of violation. As such, Defendants’ violations are ongoing and continuous in  
16 nature, and will continue to occur in the future.

17           29. After receiving HELD’s sixty-day notice of violation, the appropriate public  
18 enforcement agencies have failed to commence and diligently prosecute a cause of action  
19 against Defendants under Proposition 65.

20           30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
21 or use in California by Defendants contain DEHP such that they require a “clear and  
22 reasonable” warning under Proposition 65.

23           31. Defendants knew or should have known that the PRODUCTS they manufacture,  
24 import, distribute, sell, and offer for sale or use in California contain DEHP.

25           32. DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
26 to DEHP through dermal contact, and/or ingestion during reasonably foreseeable uses of the  
27 PRODUCTS.

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1           33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
2 continue to cause, consumer products exposures and occupational exposures to DEHP, as such  
3 exposures are defined by Title 27 of the California Code of Regulations, section 25602(b).

4           34. Defendants had knowledge that the normal and reasonably foreseeable uses of the  
5 PRODUCTS expose individuals to DEHP through dermal contact and/or ingestion.

6           35. Defendants intended that such exposures to DEHP from the reasonably  
7 foreseeable uses of the PRODUCTS would occur by Defendants' deliberate, non-accidental  
8 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS  
9 for sale or use to individuals in the State of California.

10          36. Defendants failed to provide a "clear and reasonable warning" to those consumers  
11 and other individuals in the State of California who were or who would become exposed to  
12 DEHP through dermal contact and/or ingestion during the reasonably foreseeable uses of the  
13 PRODUCTS.

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

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

22          39. As a consequence of the above-described acts, Health and Safety Code  
23 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
24 Defendants.

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1 **PRAYER FOR RELIEF**

2 Wherefore, HELD prays for judgment against Defendants, and each of them, as follows:

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

5 2. That the Court, pursuant to Health and Safety Code Section 25249.7(a),  
6 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering  
7 the PRODUCTS for sale or use in California without first providing a "clear and reasonable  
8 warning" as defined by Title 27 of the California Code of Regulations, Section 25601 *et seq.*, as  
9 to the harms associated with exposures to DEHP;

10 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue  
11 preliminary and permanent injunctions mandating that Defendants recall all PRODUCTS  
12 currently in the chain of commerce in California without a "clear and reasonable warning" as  
13 defined by California Code of Regulations title 27, § 25601 *et seq.*

14 4. That the Court grant HELD his reasonable attorneys' fees and costs of suit; and

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

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18 Dated: May 1, 2014

THE CHANLER GROUP

19  
20 By: 

\_\_\_\_\_  
Troy C. Bailey  
Attorney for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.