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ENDORSED
FILED

AUG 29 2011

Filed in the County of Santa Clara Superior Court
California

D. Wendel
County Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

BUILDING MATERIALS HOLDINGS
CORPORATION; and DOES 1-150, inclusive,

Defendants.

Case No. 114CV270088

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

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 about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical that is found in vinyl/PVC straps and grips of tape measures that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposures to DEHP present in and on the vinyl/PVC
8 straps and grips of tape measures that are distributed, sold, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC straps
11 and grips of tape measures that defendants import, manufacture, distribute, ship, sell and/or
12 offer for sale to consumers throughout the State of 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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, tape measures with vinyl/PVC straps and grips containing the LISTED
25 CHEMICAL, including, but not limited to, the *BMC 25’ x 1” Tape Measure, SKU #*
26 *SIHF7H85X, UPC #8 47952 00006* 7. All such tape measures with vinyl/PVC straps and grips
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1 containing the LISTED CHEMICAL are referred to collectively hereinafter as the
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers and other individuals in California of the
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants’
5 sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65,
6 and subject defendants to enjoinder of such conduct, as well as civil penalties for each
7 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 and 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, and each of them, for each violation 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 harmful exposures to toxic chemicals from consumer products. He brings this
18 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant BUILDING MATERIALS HOLDINGS CORPORATION (“BMC”) is
20 a person in the course of doing business within the meaning of Health and Safety Code sections
21 25249.6 and 25249.11.

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

25 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
26 person in the course of doing business within the meaning of Health and Safety Code s sections
27 25249.6 and 25249.11.

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

5 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
6 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

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

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

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

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

21 20. BMC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
22 and RETAILER DEFENDANTS are hereinafter collectively referred to as “DEFENDANTS.”

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24 **VENUE AND JURISDICTION**

25 21. Venue is proper in the County of Santa Clara, pursuant to Code of Civil
26 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
27 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
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1 wrongful conduct occurred, and continue to occur, in this county, and/or because
2 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
3 respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 23, inclusive.

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

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

26 27. On April 30, 2014, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to BMC and the requisite public enforcement
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1 agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the
2 LISTED CHEMICAL, workers, consumers, and other individuals in the State of California
3 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use
4 of the PRODUCTS, without the individual purchasers and users first having received a "clear
5 and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

1 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
3 and/or ingestion.

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

8 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
9 consumers and other individuals in California who have been, or will be, exposed to the
10 LISTED CHEMICAL.

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

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

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

23 **PRAYER FOR RELIEF**

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

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


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

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

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

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9 Dated: August 29, 2014

Respectfully Submitted,
THE CHANLER GROUP

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12 By: 
13 Christopher Tuttle
14 Attorneys for Plaintiff
15 ANTHONY E. HELD, PH.D., P.E.
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