

ENDORSED
FILED
ALAMEDA COUNTY

JUL 22 2015

CLERK OF THE SUPERIOR COURT
Anita Dhir

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 **RG15778874**

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

) Case No. _____

17 Plaintiff,

) **COMPLAINT FOR CIVIL PENALTIES
) AND INJUNCTIVE RELIEF**

18 v.

) (Health & Safety Code § 25249.5 *et seq.*)

19 DIAL INDUSTRIES INCORPORATED;
20 DIAL MANUFACTURING, INC.; and DOES
21 1-150, inclusive,

22 Defendants.

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 of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC tubing sold by defendants
6 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 exposure to DEHP present in
9 and on vinyl/PVC tubing manufactured, distributed, and offered for sale or use to consumers
10 and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC tubing that
12 defendants manufacture, distribute, and offer for sale to consumers and other individuals
13 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. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause birth defects (and 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).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
25 hazard warnings in California, vinyl/PVC tubing containing DEHP.

26 7. Defendants also manufacture, distribute, import, sell and/or offer for sale without
27 health hazard warnings in California, the *Standard ½" Pump Hose, PN 4372, B13-254, Form*
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1 97662-093, UPC #0 26529 43720 2. All vinyl/PVC tubing containing DEHP are referred to
2 collectively hereinafter as "PRODUCTS."

3 8. Defendants' failure to warn consumers and other individuals in the State of
4 California of the health hazards associated with exposures to DEHP in conjunction with
5 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
6 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
7 Health & Safety Code § 25249.7(a) & (b)(1).

8 9. 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 DEHP. Health & Safety Code § 25249.7(a).

12 10. 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 11. 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 12. Defendant DIAL INDUSTRIES INCORPORATED ("DIAL INDUSTRIES") is a
20 person in the course of doing business within the meaning of Health and Safety Code sections
21 25249.6 and 25249.11.

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

1 14. Defendant DIAL MANUFACTURING, INC. (“DIAL MANUFACTURING”) is
2 a person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 15. DIAL MANUFACTURING manufactures, imports, distributes, sells, and/or offers
5 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

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

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

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

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

4 23. DIAL INDUSTRIES, DIAL MANUFACTURING, MANUFACTURER
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
6 where appropriate, collectively be referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

8 24. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
10 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
11 wrongful conduct occurred, and continue to occur, in this county, and/or because
12 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
13 to the PRODUCTS.

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

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

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1 **FIRST CAUSE OF ACTION**

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

3 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 26, inclusive.

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

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

13 30. On June 20, 2014, plaintiff served a sixty-day notice of violation, together with
14 the requisite certificate of merit, on DIAL INDUSTRIES, DIAL MANUFACTURING and
15 certain public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the
16 PRODUCTS containing DEHP, purchasers and users in the State of California were being
17 exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without
18 the individual purchasers and users first having been provided with a “clear and reasonable
19 warning” regarding the harms associated with such exposures, as required by Proposition 65.

20 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
23 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
24 the future.

25 32. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
26 public enforcement agencies have commenced and diligently prosecuted a cause of action
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1 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
2 subject of plaintiff's notice of violation.

3 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers and other individuals in California are not exempt from the "clear and reasonable"
7 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

8 34. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufactured, imported, distributed, sold, and offered for sale or use in California contained
10 DEHP.

11 35. DEHP is present in or on the PRODUCTS in such a way as to expose individuals
12 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

13 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
15 of Regulations, section 25602(b).

16 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
17 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

18 38. DEFENDANTS intended that exposures to DEHP from the reasonably
19 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
20 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or
21 use to consumers and other individuals in California.

22 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and other individuals in California who were or who would become exposed to
24 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

25 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to DEHP through dermal contact and/or
27 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
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1 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
2 for which they have no plain, speedy, or adequate remedy at law.

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

6 42. As a consequence of the above-described acts, Health and Safety Code
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 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” in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

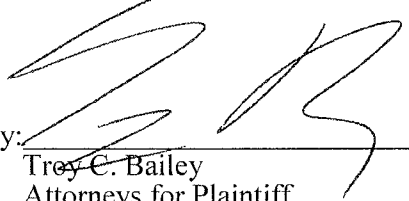
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

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18 Dated: June 19, 2015

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 
22 Troy C. Bailey
23 Attorneys for Plaintiff
24 ANTHONY E. HELD, PH.D., P.E.