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ALAMEDA COUNTY
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,
Plaintiff,
v.
AMERISOURCEBERGEN CORPORATION;
and DOES 1-150, inclusive,
Defendants.

Case No. **RG15775168**
**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 diisononyl phthalate (“DINP”), a toxic
5 chemical that is found in vinyl/PVC gloves 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 DINP present in and on the vinyl/PVC
8 gloves manufactured, distributed, and offered for sale or use to consumers throughout the State
9 of California.

10 3. Detectable levels of DINP are commonly found in and on components of
11 vinyl/PVC gloves that defendants import, manufacture, distribute, ship, sell and/or offer for sale
12 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 December 20, 2013, California listed DINP pursuant to Proposition 65 as a
19 chemical that is known to cause cancer. DINP became subject to the “clear and reasonable
20 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
21 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to hereinafter
22 as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, vinyl/PVC gloves containing the LISTED CHEMICAL, including, but
25 not limited to, the *Good Neighbor Pharmacy Medical Grade Vinyl Exam Gloves, ABC#: 157-*
26 *669, UPC #0 87701 41168* 7. All such vinyl/PVC gloves containing the LISTED CHEMICAL
27 are referred to collectively hereinafter as the “PRODUCTS.”
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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 Alameda county with respect
3 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 January 23, 2015, plaintiff’s sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to AMERISOURCE and certain public enforcement
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1 agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing the
2 LISTED CHEMICAL, consumers, and other individuals in the State of California were being
3 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
4 PRODUCTS, without the individual purchasers and users first having received a "clear and
5 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).

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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 workers, consumers and other individuals in California not covered by California’s
10 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
11 exposed to the LISTED CHEMICAL.

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

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

21 39. As a consequence of the above-described acts, Health and Safety Code
22 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
23 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” as defined by title 27 of the California Code of Regulations, section 25601
10 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

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

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

13 Dated: June 23, 2015

14 Respectfully Submitted,
15 THE CHANLER GROUP

16 By: 

17 Josh Voorhees
18 Attorneys for Plaintiff
19 ANTHONY E. HELD, PH.D., P.E.