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ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 10 2015

CLERK OF THE SUPERIOR COURT  
By D. OLIVER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 AMERISOURCEBERGEN CORPORATION;  
17 and DOES 1-150, inclusive,

18 Defendants.

Case No. RG15775168

**FIRST AMENDED 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.”

1 7. Defendants’ failure to warn consumers and other individuals in California of the  
2 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants’  
3 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of  
4 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties  
5 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

6 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
7 permanent injunctive relief to compel defendants to provide purchasers or users of the  
8 PRODUCTS with the required warning regarding the health hazards associated with exposures  
9 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
11 penalties against defendants, and each of them, for each violation of Proposition 65.

12 **PARTIES**

13 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California  
14 who is dedicated to protecting the health of California citizens through the elimination or  
15 reduction of harmful exposures to toxic chemicals from consumer products. He brings this  
16 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

17 11. Defendant AMERISOURCEBERGEN CORPORATION (“AMERISOURCE”) is  
18 a person in the course of doing business within the meaning of Health and Safety Code sections  
19 25249.6 and 25249.11.

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

24 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
25 person in the course of doing business within the meaning of Health and Safety Code sections  
26 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. AMERISOURCE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
22 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as  
23 “DEFENDANTS.”

#### 24 VENUE AND JURISDICTION

25 21. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure  
26 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because  
27 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 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).

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;

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

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

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

Dated: July 10, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
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Josh Voorhees  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.