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ENDORSED
FILED
San Francisco County Superior Court

JUL - 9 2015

CLERK OF THE COURT

BY: DENNIS TOYAMA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

CVS CAREMARK CORPORATION; CVS
PHARMACY, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. CGC-15-546785

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *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 of the health hazards caused by exposures to diisononyl phthalate
5 (“DINP”), a toxic chemical found in vinyl/PVC gloves sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens and other individuals about the risks of exposure to DINP present in
8 and on vinyl/PVC gloves manufactured, distributed, and offered for sale or use to consumers
9 and other individuals throughout the State of California.

10 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that
11 defendants manufacture, distribute, and offer for sale to consumers and other individuals
12 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. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
19 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
20 warning” requirements of the act one year later on December 20, 2104. Cal. Code Regs. tit. 27,
21 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendants manufacture, distribute, import, sell, and offer for sale without a
23 health hazard warning in California, vinyl/PVC gloves containing DINP that require a warning
24 under Proposition 65 including, but not limited to, the *CVS Pharmacy Latex-Free, Powder-*
25 *Free Super-Soft Vinyl Gloves, #212654, UPC #0 50428 26285 6*, hereinafter the
26 “PRODUCTS.”
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1 14. CVS PHARMACY manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

8 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
11 California.

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

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

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

21 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 29. On January 23, 2015, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on CVS CAREMARK, CVS PHARMACY, and certain public
9 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS
10 containing DINP, purchasers and users in the State of California were being exposed to DINP
11 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
12 purchasers and users first having been provided with a “clear and reasonable warning”
13 regarding the harms associated with such exposures, as required by Proposition 65.

14 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
15 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
16 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
17 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
18 the future.

19 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
20 public enforcement agencies have commenced and diligently prosecuted a cause of action
21 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
22 subject of plaintiff’s notice of violation.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
24 offer for sale or use in California cause exposures to DINP as a result of the reasonably
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
26 consumers and other individuals in California are not exempt from the “clear and reasonable”
27 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

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1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufactured, imported, distributed, sold, and offered for sale or use in California contained
3 DINP.

4 34. DINP is present in or on the PRODUCTS in such a way as to expose individuals
5 to DINP through dermal contact and/or ingestion during reasonably foreseeable use.

6 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
7 continues to cause, consumer exposures to DINP, as defined by title 27 of the California Code
8 of Regulations, section 25602(b).

9 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
10 the PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

11 37. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable
12 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the
13 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
14 consumers and other individuals in California.

15 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
16 consumers and other individuals in California who were or who would become exposed to
17 DINP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

18 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, individuals exposed to DINP through dermal contact and/or
20 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear
21 and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
22 for which they have no plain, speedy, or adequate remedy at law.

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