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11 and JOHN MOORE

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*  
**11/25/2015**  
**Clerk of the Court**  
BY: CAROL BALISTRERI  
Deputy Clerk

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

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14 ANTHONY E. HELD, PH.D., P.E.; and JOHN  
MOORE,

15 Plaintiffs,

16 v.

17 CVS PHARMACY, INC.; MEDLINE  
18 INDUSTRIES, INC.; and DOES 1-150,  
inclusive,

19  
20 Defendants.

Case No. CGC-15-546785

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiffs  
3 ANTHONY E. HELD, PH.D., P.E. and JOHN MOORE in the public interest of the citizens of  
4 the State of California to enforce the People’s right to be informed of the health hazards caused  
5 by exposures to diisononyl phthalate (“DINP”), a toxic chemical found in vinyl/PVC gloves  
6 sold by defendants in California.

7 2. By this First Amended Complaint, plaintiffs seek to remedy defendants’ failure to  
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code  
9 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of  
10 exposure to DINP present in and on the vinyl/PVC gloves that defendants manufacture,  
11 distribute, and offer for sale or use throughout the State of California. Individuals not covered  
12 by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who  
13 purchase, use or handle defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that  
15 defendants manufacture, distribute, and offer for sale without a warning to consumers  
16 throughout the State of California.

17 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
18 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
19 doing business shall knowingly and intentionally expose any individual to a chemical known to  
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
21 warning to such individual . . .” Health & Safety Code § 25249.6.

22 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed  
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable  
24 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,  
25 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, vinyl/PVC gloves containing DINP including, but not limited to,  
28

1 the CVS Pharmacy Latex-Free, Powder-Free Super-Soft Vinyl Gloves, #212654, UPC #0 50428  
2 26285 6 and the Curad 3G Vinyl Powder-Free Synthetic Exam Gloves, Item/Model No.  
3 CUR8236T. All vinyl/PVC gloves containing DINP are referred to collectively hereinafter as  
4 the “PRODUCTS.”

5 7. Defendants’ failure to warn consumers in the State of California of the health  
6 hazards associated with exposures to DINP in conjunction with defendants’ sales of the  
7 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
8 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
9 § 25249.7(a) & (b)(1).

10 8. For defendants’ violations of Proposition 65, plaintiffs seek preliminary and  
11 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
12 the required warning regarding the health hazards associated with exposures to DINP. Health &  
13 Safety Code § 25249.7(a).

14 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiffs also seek civil  
15 penalties against defendants for their violations of Proposition 65.

16 **PARTIES**

17 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California  
18 who is dedicated to protecting the health of California citizens through the elimination or  
19 reduction of toxic exposures from consumer products; and he brings this action in the public  
20 interest pursuant to Health and Safety Code section 25249.7(d).

21 11. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
22 protecting the health of California citizens through the elimination or reduction of toxic  
23 exposures from consumer products; and he also brings this action in the public interest pursuant  
24 to Health and Safety Code section 25249.7(d). ANTHONY E. HELD, PH.D., P.E. and JOHN  
25 MOORE are referred to collectively herein as “PLAINTIFFS.”

26 12. Defendant CVS PHARMACY, INC. (“CVS”) is a person in the course of doing  
27 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.  
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1           13.    CVS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
2 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           14.    Defendant MEDLINE INDUSTRIES, INC. (“MEDLINE”) is a person in the  
5 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
6 25249.11.

7           15.    MEDLINE manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
8 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
9 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

10          16.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
11 person in the course of doing business within the meaning of Health and Safety Code sections  
12 25249.6 and 25249.11.

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

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

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

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

26          21.    RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
27 State of California.

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1 **FIRST CAUSE OF ACTION**

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

3 27. PLAINTIFFS reallege and incorporate 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 January 23, 2015, plaintiff ANTHONY E. HELD, PH.D., P.E., served a sixty-  
14 day notice of violation, together with the requisite certificate of merit, on CVS CAREMARK,  
15 CVS PHARMACY, the California Attorney General, and the requisite public enforcement  
16 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
17 DINP, consumers in the State of California are being exposed to DINP resulting from their  
18 reasonably foreseeable use of the PRODUCTS, without the consumers first having received a  
19 “clear and reasonable warning” regarding the harms associated with such exposures, as required  
20 by Proposition 65.

21 31. On January 30, 2015, plaintiff JOHN MOORE served a sixty-day notice of  
22 violation, together with the requisite certificate of merit, on MEDLINE, the California Attorney  
23 General, and the requisite public enforcement agencies alleging that, as a result of  
24 DEFENDANTS’ sales of the PRODUCTS containing DINP, consumers in the State of  
25 California are being exposed to DINP resulting from their reasonably foreseeable use of the  
26 PRODUCTS, without the consumers first having received a “clear and reasonable warning”  
27 regarding the harms associated with such exposures, as required by Proposition 65.

1           32.    DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
2 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
3 violations have continued beyond their receipt of PLAINTIFFS’ sixty-day notices of violation.  
4 DEFENDANTS’ violations are ongoing and continuous in nature and, as such, will continue in  
5 the future.

6           33.    After receiving PLAINTIFFS’ sixty-day notices of violation, no public  
7 enforcement agency has commenced and diligently prosecuted a cause of action against  
8 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of  
9 either of the PLAINTIFFS’ sixty-day notices.

10          34.    The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
11 offer for sale or use in California expose consumers to DINP as a result of the reasonably  
12 foreseeable use of the PRODUCTS. Such exposures are not exempt from the “clear and  
13 reasonable” warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

14          35.    DEFENDANTS knew or should have known that the PRODUCTS they  
15 manufacture, import, distribute, sell, and offer for sale or use in California contain DINP.

16          36.    DINP is present in or on the PRODUCTS in such a way as to expose consumers  
17 to DINP through dermal contact and/or ingestion during reasonably foreseeable use.

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

21          38.    DEFENDANTS know that the normal and reasonably foreseeable use of the  
22 PRODUCTS exposes consumers to DINP through dermal contact and/or ingestion.

23          39.    DEFENDANTS intend that exposures to DINP from the reasonably foreseeable  
24 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
25 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
26 consumers in California.

1 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
2 consumers in California exposed to DINP through dermal contact and/or ingestion resulting  
3 from the use of the PRODUCTS.

4 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
5 directly by California voters, consumers exposed to DINP through dermal contact and/or  
6 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear  
7 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm  
8 for which they have no plain, speedy, or adequate remedy at law.

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

12 43. As a consequence of the above-described acts, Health and Safety Code  
13 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
14 DEFENDANTS.

15 **PRAYER FOR RELIEF**

16 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

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

20 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
21 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
22 offering the PRODUCTS for sale or use in California without first providing a “clear and  
23 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
24 25601 *et seq.*, regarding the harms associated with exposures to DINP;

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

3 4. That the Court grant PLAINTIFFS their reasonable attorneys’ fees and costs of  
4 suit; and

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

6  
7 Dated: November 25, 2015

8 Respectfully Submitted,  
9 THE CHANLER GROUP

10  
11 By: 

12 Brian C. Johnson  
13 Attorneys for Plaintiffs  
14 ANTHONY E. HELD, PH.D., P.E.  
15 and JOHN MOORE  
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