

FILED

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MARIN COUNTY SUPERIOR COURT
By: C. Lucchest, Deputy

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

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

Plaintiff,

v.

KIMBERLY-CLARK CORPORATION; and
DOES 1-150, inclusive,

Defendants.

Case No. CW1502667^d

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 individuals not covered by California's Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle defendants' products, about the risks of
9 exposure to DINP present in and on vinyl/PVC gloves manufactured, distributed, and offered
10 for sale or use throughout the State of California. Individuals not covered by California's
11 Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase, use or handle
12 defendants' products are referred to hereinafter as "consumers".

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

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

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

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, vinyl/PVC gloves containing DINP including, but not limited to,
27 *Kimberly-Clark Synthetic Powder-Free Vinyl Exam Gloves, #55033, UPC #0 36000 55033 7.*
28

1 All vinyl/PVC gloves containing DINP are referred to collectively hereinafter as
2 "PRODUCTS."

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

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

12 9. 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 10. 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 11. Defendant KIMBERLY-CLARK CORPORATION. ("KIMBERLY") is a person
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

22 12. KIMBERLY 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.

26 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
27 person in the course of doing business within the meaning of Health and Safety Code sections
28 25249.6 and 25249.11.

1 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to
2 the PRODUCTS.

3 22. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court "original
5 jurisdiction in all causes except those given by statute to other trial courts." The statute under
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

13 **FIRST CAUSE OF ACTION**

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

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 23, inclusive.

17 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm."

21 26. Proposition 65 states, "[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual" Health & Safety Code § 25249.6.

25 27. On January 30, 2015, plaintiff served a sixty-day notice of violation, together
26 with the requisite certificate of merit, on KIMBERLY and certain public enforcement agencies
27 alleging that, as a result of DEFENDANTS' sales of the PRODUCTS containing DINP,
28 consumers in the State of California were being exposed to DINP resulting from their

1 reasonably foreseeable use of the PRODUCTS, without the consumers first having been
2 provided with a "clear and reasonable warning" regarding the harms associated with such
3 exposures, as required by Proposition 65.

4 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
5 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS'
6 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.
7 DEFENDANTS' violations are ongoing and continuous in nature and, as such, will continue in
8 the future.

9 29. After receiving plaintiff's sixty-day notice of violation, no public enforcement
10 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
11 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
12 violation.

13 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
14 offer for sale or use in California cause exposures to DINP as a result of the reasonably
15 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
16 consumers in California are not exempt from the "clear and reasonable" warning requirements
17 of Proposition 65, yet DEFENDANTS provide no warning.

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 DINP.

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

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

25 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
26 PRODUCTS exposes consumers to DINP through dermal contact and/or ingestion.

27 35. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable
28 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the

1 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
2 consumers in California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers in California who were or who would become exposed to DINP through dermal
5 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
26 25601 *et seq.*, regarding the harms associated with exposures to DINP;

27 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
28 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS


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currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

- 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: July 20, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 
Warren M. Klein
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D, P.E.