

**ENDORSED FILED
SAN MATEO COUNTY**

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Clerk of the Superior Court
By MADELINE MASTERSON
DEPUTY CLERK

1 Christopher Tuttle, State Bar No. 264545
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

8 Attorneys for Plaintiff
9 ANTHONY E. HELD, PH.D., P.E.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN MATEO

12 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 HBC HOLDINGS, LLC; HOWARD BERGER
17 CO. LLC; and DOES 1-150, inclusive,

18 Defendants.

Case No.

CIV 534315

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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By Fax

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: (i) di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl/PVC electrical tape sold by
6 defendants in California; and (ii) diisononyl phthalate (“DINP”), a toxic chemical found in
7 vinyl/PVC gloves sold by defendants in California.

8 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
9 warn California citizens and other individuals about the risks of exposure to: (i) DEHP present
10 in and on vinyl/PVC electrical tape, manufactured, distributed, and offered for sale or use to
11 consumers and other individuals throughout the State of California; and to (ii) DINP present in
12 vinyl/PVC gloves, manufactured, distributed, and offered for sale or use to consumers and other
13 individuals throughout the State of California

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC electrical tape that
15 defendants manufacture, distribute, and offer for sale to consumers and other individuals
16 throughout the State of California.

17 4. Detectable levels of DINP are found in and on the vinyl/PVC gloves that
18 defendants manufacture, distribute, and offer for sale to consumers and other individuals
19 throughout the State of California.

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

25 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
26 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
27 subject to the “clear and reasonable warning” requirements of the act one year later on October
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1 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 7. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
4 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
5 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
6 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 8. Defendants manufacture, distribute, import, sell, and offer for sale without a
8 health hazard warning in California, the following “PRODUCTS”:

9 i. vinyl/PVC electrical tape containing DEHP that requires a warning under
10 Proposition 65 including, but not limited to, the *H.B. Smith Tools Vinyl*
11 *Electrical Tape, No. 100/2, UPC #0 75877 15234 3*, hereinafter the “TAPE
12 PRODUCTS”; and

13 ii. vinyl/PVC gloves containing DINP that requires a warning under Proposition
14 65 including, but not limited to, the *GAM Plus+ 8-Vinyl Gloves, SP-98873*,
15 *UPC #0 76670 98873 3*, hereinafter the “GLOVE PRODUCTS.”

16 9. Defendants’ failure to warn consumers and other individuals in the State of
17 California of the health hazards associated with exposures to DEHP in conjunction with
18 defendants’ sales of the TAPE PRODUCTS, and exposures to DINP in conjunction with
19 defendants’ sales of the GLOVE PRODUCTS, are violations of Proposition 65, and subject
20 defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each
21 violation. Health & Safety Code § 25249.7(a) & (b)(1).

22 10. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
23 permanent injunctive relief to compel defendants to provide purchasers or users of the
24 PRODUCTS with the required warning regarding the health hazards associated with exposures
25 to DEHP. Health & Safety Code § 25249.7(a).

26 11. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
27 penalties against defendants for their violations of Proposition 65.

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1 **PARTIES**

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

6 13. Defendant HBC HOLDINGS, LLC (“HBC”) is a person in the course of doing
7 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

11 15. Defendant HOWARD BERGER CO. LLC (“HOWARD”) is a person in the
12 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
13 25249.11.

14 16. HOWARD manufactures, imports, distributes, sells, and/or offers the PRODUCTS
15 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
16 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

17 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
18 person in the course of doing business within the meaning of Health and Safety Code sections
19 25249.6 and 25249.11.

20 18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
21 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
22 and manufacture one or more of the TAPE PRODUCTS or the GLOVE PRODUCTS offered
23 for sale or use in the State of California.

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

27 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
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1 transport one or more of the TAPE PRODUCTS or the GLOVE PRODUCTS to individuals,
2 businesses, or retailers for sale or use in the State of California.

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

6 22. RETAILER DEFENDANTS offer the TAPE PRODUCTS and/or the GLOVE
7 PRODUCTS for sale to individuals in the State of California.

8 23. At this time, the true names of defendants DOES 1 through 150, inclusive, are
9 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
10 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
11 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
12 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

13 24. HBC, HOWARD, MANUFACTURER DEFENDANTS, DISTRIBUTOR
14 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
15 referred to as “DEFENDANTS.”

16 **VENUE AND JURISDICTION**

17 25. Venue is proper in San Mateo County Superior Court, pursuant to Code of Civil
18 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
19 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
20 wrongful conduct occurred, and continue to occur, in this county, and/or because
21 DEFENDANTS conducted, and continue to conduct, business in San Mateo County with
22 respect to the PRODUCTS.

23 26. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, section 10, which grants the Superior Court “original
25 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
26 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

7 **FIRST CAUSE OF ACTION**

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

9 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 27, inclusive.

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

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

19 31. On March 31, 2015, plaintiff served a sixty-day notice of violation, together with
20 the requisite certificate of merit, on HBC, HOWARD, and certain public enforcement agencies
21 alleging that, as a result of DEFENDANTS' sales of the TAPE PRODUCTS containing DEHP,
22 and the GLOVE PRODUCTS containing DINP, purchasers and users in the State of California
23 were being exposed to DEHP resulting from their reasonably foreseeable use of the TAPE
24 PRODUCTS, and to DINP from their reasonably foreseeable use of the GLOVE PRODUCTS,
25 without the individual purchasers and users first having been provided with a "clear and
26 reasonable warning" regarding the harms associated with such exposures, as required by
27 Proposition 65.

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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 plaintiff's sixty-day notice of violation.
4 DEFENDANTS' violations are ongoing and continuous in nature, and, as such, will continue in
5 the future.

6 33. After receiving plaintiff's sixty-day notice of violation, none of the appropriate
7 public enforcement agencies have commenced and diligently prosecuted a cause of action
8 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
9 subject of plaintiff's notice of violation.

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

16 35. DEFENDANTS knew or should have known that the TAPE PRODUCTS they
17 manufactured, imported, distributed, sold, and offered for sale or use in California contained
18 DEHP.

19 36. DEFENDANTS knew or should have known that the that the GLOVE
20 PRODUCTS they manufactured, imported, distributed, sold, and offered for sale or use in
21 California contained DINP.

22 37. DEHP is present in or on the TAPE PRODUCTS in such a way as to expose
23 individuals to DEHP through dermal contact and/or ingestion during reasonably foreseeable
24 use.

25 38. DINP is present in or on the GLOVE PRODUCTS in such a way as to expose
26 individuals to DINP through dermal contact and/or ingestion during reasonably foreseeable use.
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1 39. The normal and reasonably foreseeable use of the TAPE PRODUCTS has caused,
2 and continues to cause, consumer exposures to DEHP, as defined by title 27 of the California
3 Code of Regulations, section 25602(b).

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

7 41. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the TAPE PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

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

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

16 44. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable
17 use of the GLOVE PRODUCTS would occur, by their deliberate, non-accidental participation
18 in the manufacture, importation, distribution, sale, and offering of the GLOVE PRODUCTS for
19 sale or use to consumers and other individuals in California.

20 45. DEFENDANTS failed to provide a “clear and reasonable warning” to those
21 consumers and other individuals in California who were or who would become exposed to
22 DEHP through dermal contact and/or ingestion resulting from their use of the TAPE
23 PRODUCTS.

24 46. DEFENDANTS failed to provide a “clear and reasonable warning” to those
25 consumers and other individuals in California who were or who would become exposed to
26 DINP through dermal contact and/or ingestion resulting from their use of the GLOVE
27 PRODUCTS.

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

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

9 49. As a consequence of the above-described acts, Health and Safety Code
10 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **PRAYER FOR RELIEF**

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

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

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

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

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


27 5. That the Court grant such other and further relief as may be just and proper.
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Dated: June 18, 2015

Respectfully Submitted,

THE CHANLER GROUP

By: 

Christopher Tuttle
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.