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ENDORSED
FILED
ALAMEDA COUNTY

JUL 01 2015

CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

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

ANTHONY E. HELD, PH.D., P.E.,
Plaintiffs,
v.
CUSTOM LEATHERCRAFT MFG. CO., INC.;
and DOES 1-150,
Defendants.

Case No. RG15776227
**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 by defendants to
9 consumers 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, 2014. 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 including, but not
24 limited to, the *CLC Custom LeatherCraft Vinyl Disposable Gloves, #2312, UPC #0 84298*
25 *23125 4*. All such vinyl/PVC gloves containing DINP, shall be referred to hereinafter as
26 "PRODUCTS."
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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 Santa Clara County with
3 respect 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 April 24, 2015, ANTHONY E. HELD, PH.D., P.E. provided a sixty-day
27 notice of violation, together with the requisite certificates of merit, to CUSTOM
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1 LEATHERCRAFT MFG. CO., INC., and certain public enforcement agencies, alleging that, as
2 a result of DEFENDANTS' sales of their respective PRODUCTS containing DINP, purchasers
3 and users in the State of California were being exposed to DINP resulting from their reasonably
4 foreseeable use of the PRODUCTS, without the individual purchasers and users first having
5 been provided with a "clear and reasonable warning" regarding the harms associated with such
6 exposures, as required by Proposition 65.

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

12 29. After receiving plaintiff's sixty-day notice of violation, none of the appropriate
13 public enforcement agencies have commenced and diligently prosecuted a cause of action
14 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
15 subject of plaintiff's notice of violation.

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

21 31. DEFENDANTS knew or should have known that the PRODUCTS they
22 manufactured, imported, distributed, sold, and offered for sale or use in California contained
23 DINP.

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

4 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
5 the PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

6 35. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable
7 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the
8 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
9 consumers and other individuals in California.

10 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
11 consumers and other individuals in California who were or who would become exposed to
12 DINP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

13 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
14 directly by California voters, individuals exposed to DINP through dermal contact and/or
15 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
16 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
17 for which they have no plain, speedy, or adequate remedy at law.

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

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

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1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures DINP;

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


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

16 5. That the Court grant such other and further relief as may be just and proper.
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18 Dated: June 30, 2015

Respectfully Submitted,

19 THE CHANLER GROUP
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21 
22 By: _____
23 Warren M. Klein
24 Attorneys for Plaintiff
25 ANTHONY E. HELD, PH.D., P.E.
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