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FILED

NOV 20 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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

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

Plaintiff,

v.

EMERALD MEDICAL INC.;
AMAZON.COM, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. CIV 1504241

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *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 its vinyl/PVC gloves that are manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle 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. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
22 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
23 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
24 § 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,
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1 the *Emerald BLUE Powder Free Vinyl Gloves, Item No. 7122, (UPC No. 6 04539 00122 6)*. All
2 vinyl/PVC gloves containing DINP are referred to collectively hereinafter as “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 EMERALD MEDICAL INC. (“EMERALD”) is a person in the course
20 of doing business within the meaning of Health and Safety Code sections 25249.6 and
21 25249.11.

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

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

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

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

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

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

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

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

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 April 24, 2015, plaintiff served a sixty-day notice of violation, together with
8 the requisite certificate of merit, on EMERALD, AMAZON, and the requisite public
9 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS
10 containing DINP, consumers in the State of California were being exposed to DINP resulting
11 from their reasonably foreseeable use of the PRODUCTS, without the consumers first having
12 been provided with a “clear and reasonable warning” regarding the harms associated with such
13 exposures, as required by Proposition 65.

14 30. Since at least December 20, 2015, DEFENDANTS have manufactured, imported,
15 distributed, sold, and offered the PRODUCTS for sale or use in violation of Health and Safety
16 Code section 25249.6, and DEFENDANTS’ violations have continued beyond their receipt of
17 plaintiff’s sixty-day notice of violation. DEFENDANTS’ violations are ongoing and
18 continuous in nature and, unless enjoined, will continue in the future.

19 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
21 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s sixty-day
22 notice.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
24 offer for sale or use in California expose consumers to DINP as a result of the reasonably
25 foreseeable use of the PRODUCTS. Such exposures are not exempt from the “clear and
26 reasonable” 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 manufacture, import, distribute, sell, and offer for sale or use in California contain DINP.

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

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

8 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes consumers to DINP through dermal contact and/or ingestion.

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

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

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

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

25 41. As a consequence of the above-described acts, Health and Safety Code
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
27 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 to 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: November 20, 2015

Respectfully Submitted,
THE CHANLER GROUP

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21 By: Kimberly Gates
22 Kimberly Gates
23 Attorneys for Plaintiff
24 ANTHONY E. HELD, PH.D., P.E.
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