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ENDORSED
FILED
ALAMEDA COUNTY

SEP 02 2015

CLERK OF THE SUPERIOR COURT
By Jayana Turner

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E.
15 Plaintiff,
16 v.
17 SHAMROCK MARKETING CO., INC.; and
18 DOES 1-150, inclusive,
19 Defendants.

20 Case No. **2015 784375**
21 **COMPLAINT FOR CIVIL PENALTIES**
22 **AND INJUNCTIVE RELIEF**
23 (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 *Shamrock Synthetic Vinyl Examination Gloves, #20213, UPC #6 41932 20213 3*. All
28 vinyl/PVC gloves containing DINP are referred to collectively hereinafter as “PRODUCTS.”

1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

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

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

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

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

19 20. SHAMROCK, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
21 referred to as “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
24 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
26 wrongful conduct occurred, and continue to occur, in this county, and/or because
27 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
28 to the PRODUCTS.

1 provided with a “clear and reasonable warning” regarding the harms associated with such
2 exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

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 plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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6 Dated: September 2, 2015

Respectfully Submitted,
THE CHANLER GROUP

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9 By: 
10 Warren M. Klein
11 Attorneys for Plaintiff
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