

FILED

SEP 25 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith Deputu

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

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

15 Plaintiff,

16 v.

17 IDENTITY GROUP HOLDINGS CORP.;;
18 and DOES 1-150, inclusive,

19 Defendants.

Case No. CV 1503523

**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 di(2-ethylhexyl)
5 phthalate (“DEHP”), a toxic chemical found in vinyl/PVC self stick sheets sold by defendants in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
9 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
10 exposure to DEHP present in and on vinyl/PVC self stick sheets manufactured, distributed, and
11 offered for sale or use throughout the State of California. Individuals not covered by
12 California’s Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase,
13 use or handle defendants’ products are referred to hereinafter as “consumers”.

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

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

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

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
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1 hazard warnings in California, vinyl/PVC self stick sheets containing DEHP including, but not
2 limited to, *Headline Sign Self Stick Vinyl Sheet, #38003, UPC #0 83392 38003 5*. All
3 vinyl/PVC self stick sheets containing DEHP are referred to collectively hereinafter as
4 “PRODUCTS.”

5 7. Defendants’ failure to warn consumers in the State of California of the health
6 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the
7 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
8 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
9 § 25249.7(a) & (b)(1).

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

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

16 **PARTIES**

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

21 11. Defendant IDENTITY GROUP HOLDINGS CORP. (“IDENTITY”) is a person
22 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 12. IDENTITY manufactures, imports, distributes, sells, and/or offers the
25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
26 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
27 State of California.

1 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

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

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

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

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

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

24 20. IDENTITY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as “DEFENDANTS.”
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VENUE AND JURISDICTION

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

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

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

5 27. On April 29, 2015, plaintiff served a sixty-day notice of violation, together with
6 the requisite certificate of merit, on IDENTITY and certain public enforcement agencies
7 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing DEHP,
8 consumers in the State of California were being exposed to DEHP resulting from their
9 reasonably foreseeable use of the PRODUCTS, without the consumers first having been
10 provided with a “clear and reasonable warning” regarding the harms associated with such
11 exposures, as required by Proposition 65.

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

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

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

26 31. DEFENDANTS knew or should have known that the PRODUCTS they
27 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.
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1 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
2 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
3 each violation;

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

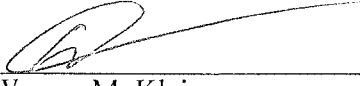
9 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
10 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
11 currently in the chain of commerce in California without a “clear and reasonable warning” as
12 defined by California Code of Regulations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

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

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

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16 Dated: September 24, 2015

Respectfully Submitted,
THE CHANLER GROUP

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