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ENDORSED  
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S. ACKARD  
CLERK OF SUPERIOR COURT  
COUNTY OF SANTA CLARA

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION

**115CV288443**

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

14 v.

15 BISON PRODUCTION COMPANY; THE  
16 HOME DEPOT, INC.; and DOES 1-150,  
inclusive,  
17 Defendants.

) Case No. \_\_\_\_\_  
)  
) **COMPLAINT FOR CIVIL PENALTIES**  
) **AND INJUNCTIVE RELIEF**  
)  
) (Health & Safety Code § 25249.5 *et seq.*)

**NATURE OF THE ACTION**

1  
2           1.       This Complaint is a representative action brought by plaintiff ANTHONY E.  
3 HELD, OH.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 and on the vinyl/PVC gloves 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 DINP present in and on the vinyl/PVC gloves 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 DINP are found in and on the vinyl/PVC gloves that  
15 defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
16 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 December 20, 2013, California identified and listed  
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable  
24 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,  
25 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26           6.       Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, gloves that contain DINP including, but not limited to, *Bison Life*  
28

1 *Vinyl Powder Free Multipurpose Gloves, BL-NPFCVG-03, UPC #8 51272 00454 4.* All such  
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 BISON PRODUCTION COMPANY (“BISON”) is a person in the  
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
21 25249.11.

22 12. BISON manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
23 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 13. Defendant THE HOME DEPOT, INC. (“HOME DEPOT”) is a person in the  
26 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
27 25249.11.

1           14. HOME DEPOT manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
6 person in the course of doing business within the meaning of Health and Safety Code sections  
7 25249.6 and 25249.11.

8           16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
9 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
10 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
11 sale or use in California.

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

15           18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
16 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
17 retailers for sale or use in the State of California, or each implies by its conduct that it  
18 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
19 individuals, businesses, or retailers for sale or use in the State of California.

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

23           20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
24 individuals in the State of California.

25           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
26 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
27 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
28

1 allege, that each of the fictitiously named defendants is responsible for the acts and occurrences  
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 22. BISON, HOME DEPOT, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
4 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be  
5 referred to collectively as the “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 23. Venue is proper in the Superior Court for the County of Santa Clara pursuant to  
8 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of  
9 competent jurisdiction, because Plaintiff seeks civil penalties against DEFENDANTS, because  
10 one or more instances of wrongful conduct occurred, and continue to occur, in this county,  
11 and/or because DEFENDANTS conducted, and continue to conduct, business in Santa Clara  
12 County with respect to the PRODUCTS.

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

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

23 **FIRST CAUSE OF ACTION**

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

25 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
26 Paragraphs 1 through 25, inclusive.

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

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

9           29. On July 13, 2015, plaintiff served a sixty-day notice of violation, together with the  
10 accompanying certificate of merit, on BISON, HOME DEPOT, California Attorney General’s  
11 Office, and the requisite public enforcement agencies alleging that, as a result of  
12 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being  
13 exposed to DINP resulting from their reasonably foreseeable use of the PRODUCTS, without  
14 the consumers first receiving a “clear and reasonable warning” regarding the harms associated  
15 with exposures to DINP, as required by Proposition 65.

16           30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
17 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
18 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As  
19 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined  
20 will continue in the future.

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

25           32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
26 offer for sale or use in California cause exposures to DINP as a result of the reasonably  
27 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
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1 consumers in California are not exempt from the “clear and reasonable” warning requirements  
2 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

3 33. DEFENDANTS knew or should have known that the PRODUCTS they  
4 manufacture, import, distribute, sell, and offer for sale in California contain DINP.

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

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

10 36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
11 PRODUCTS exposes individuals to DINP through dermal contact and/or ingestion.

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

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 consumers in California who have been, or who will be, exposed to DINP through dermal  
18 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

1 41. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4 **PRAYER FOR RELIEF**

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

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

9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
11 offering the PRODUCTS for sale or use in California without first providing a “clear and  
12 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
13 25601 *et seq.*, regarding the harms associated with exposures to DINP;


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

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

19 5. That the Court grant such other and further relief as may be just and proper.  
20  
21

22 Dated: November 24, 2015

Respectfully submitted,  
THE CHANLER GROUP

24 By:   
25 Clifford Chanler  
26 Attorneys for Plaintiff  
ANTHONY HELD