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STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By D. WAGNER Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF CONTRA COSTA
10 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 SEIDMAN ASSOCIATES; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. C16-01125

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

18 PER LOCAL RULE 5 THIS
19 CASE IS ASSIGNED TO
20 DEPT 9
21 SUPERIOR COURT

By Fax

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E. HELD,
3 PH.D., P.E. in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the health hazards caused by exposures to: (i) di(2-ethylhexyl)phthalate
5 (“DEHP”), a toxic chemical found in vinyl/PVC gloves, gloves with vinyl/PVC components,
6 vinyl/PVC Gloves, vinyl/PVC raingear, and vinyl/PVC aprons sold by defendants in California; and
7 (ii) diisononyl phthalate (“DINP”), a toxic chemical found in vinyl/PVC gloves manufactured,
8 distributed, shipped, sold and offered for sale in California by defendants.

9 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
10 California citizens and other individuals about the risks of exposure to: (i) DEHP present in and on
11 vinyl/PVC gloves, vinyl/PVC raingear, vinyl/PVC aprons, and gloves with vinyl/PVC components,
12 manufactured, distributed, shipped, sold and offered for sale or use to consumers and other
13 individuals throughout the State of California; and to (ii) DINP present in vinyl/PVC gloves,
14 manufactured, distributed, shipped, sold and offered for sale or use to consumers and other
15 individuals throughout the State of California.

16 3. Detectable levels of DEHP are found in and on the vinyl/PVC gloves, vinyl/PVC
17 raingear, vinyl/PVC aprons, and gloves with vinyl/PVC components, that defendants manufacture,
18 distribute, ship and offer for sale to consumers and other individuals throughout the State of
19 California.

20 4. Detectable levels of DINP are found in and on the vinyl/PVC gloves that defendants
21 manufacture, distribute, ship and offer for sale to consumers and other individuals throughout the
22 State of California.

23 5. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
24 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
25 business shall knowingly and intentionally expose any individual to a chemical known to the state to
26 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
27 individual . . .” Health & Safety Code § 25249.6.
28

1 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
2 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
3 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
4 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

5 7. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
6 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
7 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
8 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

9 8. Significant levels of DEHP have been discovered in or on vinyl/PVC gloves,
10 vinyl/PVC raingear, vinyl/PVC aprons, and gloves with vinyl/PVC components, that are
11 manufactured, distributed, shipped and/or sold by defendants.

12 9. Examples of vinyl/PVC gloves containing DEHP that are manufactured, distributed,
13 shipped and/or sold by defendants are the *Black Dipped Gloves, GPBI-10-IS-1, RN 66741*.

14 10. Examples of vinyl/PVC raingear containing DEHP that are manufactured, distributed,
15 shipped and/or sold by defendants are the *The Safety Zone Rainsuit, Style W335-PP, RN 66741*.

16 11. Examples of vinyl/PVC aprons containing DEHP that are manufactured, distributed,
17 shipped and/or sold by defendants are the *Apron, Z-DAV06-35X48*.

18 12. Examples of gloves with vinyl/PVC components containing DEHP that are
19 manufactured, distributed, shipped and/or sold by defendants are the *Industrial Work Gloves, RN #*
20 *66741*.

21 13. All such on vinyl/PVC gloves, vinyl/PVC raingear, vinyl/PVC aprons, and gloves with
22 vinyl/PVC components identified in paragraphs 8 and 12 above, shall hereinafter be collectively
23 referred to as the “VINYL PRODUCTS.”

24 14. Significant levels of DINP have been discovered in or on vinyl/PVC gloves that are
25 manufactured, distributed, shipped and/or sold by defendants.

26 15. Examples of vinyl/PVC gloves containing DINP that are manufactured, distributed,
27 shipped and/or sold by defendants are the *The Safety Zone Powder Free Disposable Blue Vinyl*
28 *Gloves, Part #GVP9-MD-1C-BL, UPC #7 63583 40057 4*.

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

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

7 26. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
8 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
9 25249.11.

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

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

15 29. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale to
16 individuals in the State of California.

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

22 31. SEIDMAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
23 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
24 “DEFENDANTS.”

VENUE AND JURISDICTION

25
26 32. Venue is proper in Contra Costa County Superior Court, pursuant to Code of Civil
27 Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
28 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful

1 conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted,
2 and continue to conduct, business in Contra Costa County with respect to the PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 35. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
16 1 through 34, inclusive.

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

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

24 38. On July 13, 2015, plaintiff served a sixty-day notice of violation, together with the
25 requisite certificate of merit, on SEIDMAN and certain public enforcement agencies alleging that, as
26 a result of DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California
27 were being exposed to DEHP resulting from their reasonably foreseeable use of the VINYL
28 PRODUCTS, and to DINP from their reasonably foreseeable use of the GLOVE PRODUCTS,

1 without the individual purchasers and users first having been provided with a “clear and reasonable
2 warning” regarding the harms associated with such exposures, as required by Proposition 65.

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

7 40. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate public
8 enforcement agencies have commenced and diligently prosecuted a cause of action against
9 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of
10 plaintiff’s notice of violation.

11 41. The PRODUCTS that DEFENDANTS manufacture, distribute, ship, sell, and offer for
12 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of the
13 VINYL PRODUCTS, and to DINP as a result of the reasonably foreseeable use of the GLOVE
14 PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers and other
15 individuals in California are not exempt from the “clear and reasonable” warning requirements of
16 Proposition 65, yet DEFENDANTS’ PRODUCTS continued to be sold without the requisite
17 warning.

18 42. DEFENDANTS knew or should have known that the VINYL PRODUCTS they
19 manufactured, distributed, shipped, sold and offered for sale or use in California contained DEHP.

20 43. DEFENDANTS knew or should have known that the that the GLOVE PRODUCTS
21 they manufactured, distributed, shipped, sold, and offered for sale or use in California contained
22 DINP.

23 44. DEHP is present in or on the VINYL PRODUCTS in such a way as to expose
24 individuals to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

25 45. DINP is present in or on the GLOVE PRODUCTS in such a way as to expose
26 individuals to DINP through dermal contact and/or ingestion during reasonably foreseeable use.
27
28

1 46. The normal and reasonably foreseeable use of the VINYL PRODUCTS has caused, and
2 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of
3 Regulations, section 25602(b).

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

7 48. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
8 VINYL PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

9 49. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
10 GLOVE PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

11 50. DEFENDANTS intended that exposures to DEHP from the reasonably foreseeable use
12 of the VINYL PRODUCTS would occur, by their deliberate, non-accidental participation in the
13 manufacture, distribution, shipment, sale and offering of the VINYL PRODUCTS for sale or use to
14 consumers and other individuals in California.

15 51. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable use
16 of the GLOVE PRODUCTS would occur, by their deliberate, non-accidental participation in the
17 manufacture, distribution, shipment, sale and offering of the GLOVE PRODUCTS for sale or use to
18 consumers and other individuals in California.

19 52. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
20 and other individuals in California who were or who would become exposed to DEHP through
21 dermal contact and/or ingestion resulting from their use of the VINYL PRODUCTS.

22 53. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
23 and other individuals in California who were or who would become exposed to DINP through
24 dermal contact and/or ingestion resulting from their use of the GLOVE PRODUCTS.

25 54. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, individuals exposed to DEHP and/or DINP through dermal contact
27 and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS manufactured,
28 distributed, shipped, sold and offered for sale or use without a “clear and reasonable” health hazard

1 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,
2 speedy, or adequate remedy at law.

3 55. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
4 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
5 violation.

6 56. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
7 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

8 **PRAYER FOR RELIEF**

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

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

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

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

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

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

23 Dated: June 9, 2016

Respectfully Submitted,
THE CHANLER GROUP

24
25
26 By: 
27 Laralei Paras
28 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.