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FAXED

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; THE SAFETY
16 ZONE, LLC; and DOES 1-150, inclusive,
17 Defendants.

Case No. MSC16-01125

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

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1 **NATURE OF THE ACTION**

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

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

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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-10-1S-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 “DEHP 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 25. SAFETY ZONE manufactures, distributes, ships, sells and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, distributes,
3 ships, sells and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

18 31. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale to
19 individuals in the State of California.

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

25 33. SEIDMAN, SAFETY ZONE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred
27 to as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

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

19 37. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
20 1 through 36, inclusive.

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

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

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1 40. On July 13, 2015, plaintiff served a sixty-day notice of violation, together with the
2 requisite certificate of merit, on SEIDMAN, SAFTEY ZONE and certain public enforcement
3 agencies alleging that, as a result of DEFENDANTS' sales of the DINP PRODUCTS, purchasers
4 and users in the State of California were being exposed to DINP from their reasonably foreseeable
5 use of the DINP PRODUCTS, without the individual purchasers and users first having been
6 provided with a "clear and reasonable warning" regarding the harms associated with such exposures,
7 as required by Proposition 65 (the "Notice").

8 41. On October 28, 2015, plaintiff served a supplemental sixty-day notice of violation,
9 together with the requisite certificate of merit, on SEIDMAN, SAFTEY ZONE and certain public
10 enforcement agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS,
11 purchasers and users in the State of California were being exposed to DEHP resulting from their
12 reasonably foreseeable use of the DEHP PRODUCTS, and to DINP from their reasonably
13 foreseeable use of the DINP PRODUCTS, without the individual purchasers and users first having
14 been provided with a "clear and reasonable warning" regarding the harms associated with such
15 exposures, as required by Proposition 65 (the "Supplemental Notice"). The Notice and
16 Supplemental Notice are collectively referred to hereinafter as the "Notices."

17 42. DEFENDANTS manufacture, distribute, ship, sell and offer the PRODUCTS for sale
18 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations continued
19 beyond their receipt of plaintiff's Notices. DEFENDANTS' violations are ongoing and continuous
20 in nature, and, as such, will continue in the future.

21 43. After receiving plaintiff's Notices, none of the appropriate public enforcement agencies
22 have commenced and diligently prosecuted a cause of action against DEFENDANTS under
23 Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of violation.

24 44. The PRODUCTS that DEFENDANTS manufacture, distribute, ship, sell, and offer for
25 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of the
26 DEHP PRODUCTS, and to DINP as a result of the reasonably foreseeable use of the DINP
27 PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers and other
28 individuals in California are not exempt from the "clear and reasonable" warning requirements of

1 Proposition 65, yet DEFENDANTS' PRODUCTS continued to be sold without the requisite
2 warning.

3 45. DEFENDANTS knew or should have known that the DEHP PRODUCTS they
4 manufactured, distributed, shipped, sold and offered for sale or use in California contained DEHP.

5 46. DEFENDANTS knew or should have known that the that the DINP PRODUCTS they
6 manufactured, distributed, shipped, sold, and offered for sale or use in California contained DINP.

7 47. DEHP is present in or on the DEHP PRODUCTS in such a way as to expose
8 individuals to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

9 48. DINP is present in or on the DINP PRODUCTS in such a way as to expose individuals
10 to DINP through dermal contact and/or ingestion during reasonably foreseeable use.

11 49. The normal and reasonably foreseeable use of the DEHP PRODUCTS has caused, and
12 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of
13 Regulations, section 25602(b).

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

17 51. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
18 DEHP PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

19 52. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
20 DINP PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

21 53. DEFENDANTS intended that exposures to DEHP from the reasonably foreseeable use
22 of the DEHP PRODUCTS would occur, by their deliberate, non-accidental participation in the
23 manufacture, distribution, shipment, sale and offering of the DEHP PRODUCTS for sale or use to
24 consumers and other individuals in California.

25 54. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable use
26 of the DINP PRODUCTS would occur, by their deliberate, non-accidental participation in the
27 manufacture, distribution, shipment, sale and offering of the DINP PRODUCTS for sale or use to
28 consumers and other individuals in California.

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chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601 et seq.;

- 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: December 6, 2016

Respectfully Submitted,

THE CHANLER GROUP



By: _____
Laralei Paras
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.