

ENDORSED
FILED
Superior Court of California
County of San Francisco

JAN 15 2016

CLERK OF THE COURT
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Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION
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14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 BAND-IT RUBBER COMPANY, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.
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CGC-16-549932

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *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 about exposures to diisononyl phthalate ("DINP"), a toxic
5 chemical that is found in vinyl/PVC gloves that are sold 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 commonly found in and on components of
14 vinyl/PVC gloves that defendants import, manufacture, distribute, ship, sell and/or offer for sale
15 to consumers 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 listed DINP pursuant to Proposition 65 as a
22 chemical that is known to cause cancer. DINP became subject to the "clear and reasonable
23 warning" requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
24 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to hereinafter
25 as the "LISTED CHEMICAL."

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without
27 warning in California, vinyl/PVC gloves containing the LISTED CHEMICAL, including, but
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1 not limited to, the *Hauberk Powder-Free Vinyl Examination Gloves, HVPF004, UPC #6 81525*
2 *12028 43*. All such gloves containing the LISTED CHEMICAL are referred to collectively
3 hereinafter as the "PRODUCTS."

4 7. Defendants' failure to warn consumers and other individuals in California of the
5 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants'
6 sales of the PRODUCTS containing the LISTED CHEMICAL constitute violations of
7 Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil penalties
8 for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

9 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards associated with exposures
12 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
14 penalties against defendants, and each of them, for each violation of Proposition 65.

15 **PARTIES**

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

20 11. Defendant BAND-IT RUBBER COMPANY, INC. ("BAND-IT") is 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 12. BAND-IT manufactures, imports, distributes, sells, and/or offers the PRODUCTS
24 for sale or use in the State of California, or it implies by its conduct that it manufactures,
25 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of
26 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 a person
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. BAND-IT, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as
26 "DEFENDANTS."

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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.

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(Violation of Proposition 65 - Against All Defendants)

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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual” Health & Safety Code § 25249.6.

3 27. On July 31, 2015, plaintiff’s sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to BAND-IT, and certain public enforcement
5 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
6 LISTED CHEMICAL, consumers, and other individuals in the State of California were being
7 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
8 PRODUCTS, without the individual purchasers and users first having received a “clear and
9 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

10 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
11 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
12 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
13 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
14 continuous in nature, and will continue to occur in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
16 enforcement agencies have failed to commence and diligently prosecute a cause of action
17 against DEFENDANTS under Proposition 65.

18 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
19 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
20 reasonably foreseeable uses of these products result in exposures that require a “clear and
21 reasonable” warning under Proposition 65.

22 31. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
24 CHEMICAL.

25 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
26 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.
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1 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
3 defined by title 27 of the California Code of Regulations, section 25602(b).

4 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
6 and/or ingestion.

7 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
9 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
10 use to individuals in the State of California.

11 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
12 workers, consumers and other individuals in California not covered by California's
13 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been, or will be,
14 exposed to the LISTED CHEMICAL.

15 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
16 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
17 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
18 uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning,"
19 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
20 adequate remedy at law.

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

24 39. As a consequence of the above-described acts, Health and Safety Code
25 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 DEFENDANTS.
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3 **PRAYER FOR RELIEF**

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

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

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

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

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

15 Dated: January 7, 2016

16 Respectfully Submitted,
17 THE CHANLER GROUP

18 By: 

19 Josh Voorhees
20 Attorneys for Plaintiff
21 ANTHONY E. HELD, PH.D., P.E.
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