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

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

Plaintiff,

v.

TOMY CORPORATION; TOMY
INTERNATIONAL, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. 16CV291645

**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 the vinyl/PVC gloves manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.” Detectable
13 levels of DINP are commonly found in and on components of vinyl/PVC gloves that defendants
14 import, manufacture, distribute, ship, sell and/or offer for sale to consumers throughout the State
15 of California.

16 3. 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 4. 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 5. 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 *American Red Cross Be Red Cross Ready First Aid Kit (Genuine First Aid*
2 *Vinyl Gloves)*, Y7482, VG-1, UPC #0 71463 07482 2. All such vinyl/PVC gloves containing the
3 LISTED CHEMICAL are referred to collectively hereinafter as the “PRODUCTS.”

4 6. 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 7. 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 8. 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 9. 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 10. Defendant TOMY CORPORATION is a person in the course of doing business
21 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

1 12. Defendant TOMY INTERNATIONAL, INC. (“TOMY INTERNATIONAL”) is 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 13. TOMY INTERNATIONAL manufactures, imports, distributes, sells, and/or offers
5 the PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

11 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
14 California.

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

18 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
19 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
20 in the State of California.

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

24 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
25 State of California.

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

4 21. TOMY CORPORATION, TOMY INTERNATIONAL, MANUFACTURER
5 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are
6 hereinafter collectively referred to as “DEFENDANTS.”

7 **VENUE AND JURISDICTION**

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

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

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

24 **FIRST CAUSE OF ACTION**

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

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

1 26. 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 27. 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 28. On July 31, 2015, plaintiff’s sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to TOMY CORPORATION, TOMY
11 INTERNATIONAL and certain public enforcement agencies stating that, as a result of
12 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, consumers,
13 and other individuals in the State of California were being exposed to the LISTED CHEMICAL
14 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
15 purchasers and users first having received a “clear and reasonable warning” regarding such
16 toxic exposures, as required by Proposition 65.

17 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
18 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
19 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
20 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
21 continuous in nature, and will continue to occur in the future.

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

25 31. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
26 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
27 reasonably foreseeable uses of these products result in exposures that require a “clear and
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1 reasonable” warning under Proposition 65. DEFENDANTS’ violations of Proposition 65 as a
2 result of their failure to provide warnings to consumers exposed users to DINP from the
3 PRODUCTS have continued since as far back as December 20, 2014.

4 32. DEFENDANTS knew or should have known that the PRODUCTS they
5 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
6 CHEMICAL.

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

9 34. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
10 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
11 defined by title 27 of the California Code of Regulations, section 25602(b).

12 35. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
13 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
14 and/or ingestion.

15 36. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
16 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
17 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
18 use to individuals in the State of California.

19 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 workers, consumers and other individuals in California not covered by California’s
21 Occupational Safety Health Act, Labor Code section 6300 et seq. who have been or will be
22 exposed to the LISTED CHEMICAL.

23 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
24 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
25 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
26 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
27 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
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1 adequate remedy at law.

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

5 40. As a consequence of the above-described acts, Health and Safety Code
6 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 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 section 25249.7(b), assess
11 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
12 each violation;

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

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

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

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21 Dated: February 12, 2016

22 Respectfully Submitted,
23 THE CHANLER GROUP

24 By: 

25 Josh Voorhees
26 Attorneys for Plaintiff
27 ANTHONY E. HELD, PH.D., P.E.
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