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

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

14 Plaintiff,

15 v.

16 ASCEND EAGLE CORPORATION; and
17 DOES 1-150, inclusive,

18 Defendants.

Case No. 16CV292405

**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. Detectable levels of DINP are commonly found in and on components of
17 vinyl/PVC gloves that defendants import, manufacture, distribute, ship, sell and/or offer for sale
18 to consumers throughout the State of California.

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

24 5. On December 20, 2013, California listed DINP pursuant to Proposition 65 as a
25 chemical that is known to cause cancer. DINP became subject to the “clear and reasonable
26 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
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1 § 27001(b); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to hereinafter
2 as the “LISTED CHEMICAL.”

3 6. Defendants manufacture, distribute, import, sell, and offer for sale without
4 warning in California, vinyl/PVC gloves containing the LISTED CHEMICAL, including, but
5 not limited to, the *SkinTEK Powder Free Multi-Purpose Vinyl Gloves, #4016*. All such
6 vinyl/PVC gloves containing the LISTED CHEMICAL are referred to collectively hereinafter
7 as the “PRODUCTS.”

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

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

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

19 **PARTIES**

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

24 11. Defendant ASCEND EAGLE CORPORATION (“ASCEND”) is a person in the
25 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
26 25249.11.

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

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

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

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

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

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

20 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
21 State of California.

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

1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 27. On September 24, 2015, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to ASCEND and certain public enforcement agencies
9 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
10 CHEMICAL, consumers, and other individuals in the State of California were being exposed to
11 the LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS,
12 without the individual purchasers and users first having received a “clear and reasonable
13 warning” regarding such toxic exposures, as required by Proposition 65.

14 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
15 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
16 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
17 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
18 continuous in nature, and will continue to occur in the future.

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

22 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
23 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
24 reasonably foreseeable uses of these products result in exposures that require a “clear and
25 reasonable” warning under Proposition 65.
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1 31. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

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

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

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

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

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

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

