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FILED

DEC 31 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

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

12 Plaintiff,

13 v.

14 THE MICHAELS COMPANIES, INC.;
15 MICHAEL'S STORES, INC.; and DOES 1-
16 150, inclusive,

17 Defendants.

Case No. CV 1504660

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

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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 diisononyl phthalate
5 (“DINP”), a toxic chemical found in and on the vinyl/PVC gloves sold by defendant in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
9 section 6300 et seq., who purchase, use or handle defendant’s products, about the risks of
10 exposure to DINP present in and on the vinyl/PVC gloves manufactured, distributed, and
11 offered for sale or use throughout the State of California. Individuals not covered by
12 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
13 use or handle defendant’s products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that
15 defendant manufacture, distribute, and offer for sale to consumers throughout the State of
16 California.

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

22 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
24 warning” requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
25 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendant manufactures, distributes, imports, sells, and offers for sale without
27 health hazard warnings in California, vinyl/PVC gloves that contain DINP including, but not
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1 limited to *ArtMinds Multi Purpose vinyl gloves, #358199, #85569-2015-01, UPC #4 00100*
2 *71441 6*, All such vinyl/PVC gloves containing DINP are referred to collectively hereinafter as
3 “PRODUCTS.”

4 7. Defendant’s failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DINP in conjunction with defendant’s sales of the
6 PRODUCTS are violations of Proposition 65, and subject defendant, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

9 8. For defendant’s violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendant to provide consumers of the PRODUCTS with
11 the required warning regarding the health hazards associated with exposures to DINP. Health &
12 Safety Code § 25249.7(a).

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
14 penalties against defendant for its violations 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 toxic exposures from consumer products; and he brings this action in the public
19 interest pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant The Michaels Companies, Inc. (“MICHAELS COMPANIES”) is a
21 person in the course of doing business within the meaning of Health and Safety Code sections
22 25249.6 and 25249.11.

23 12. MICHAELS COMPANIES manufactures, imports, distributes, sells, and/or offers
24 the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

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1 13. Defendant Michaels Stores, Inc. (“MICHAELS STORES”) is a person in the
2 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

4 14. MICHAELS STORES manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or 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 15. 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 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
12 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
13 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
14 sale or use in California.

15 17. 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 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
19 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
20 retailers for sale or use in the State of California, or each implies by its conduct that it
21 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
22 individuals, businesses, or retailers for sale or use in the State of California.

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

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

6 22. MICHAELS COMPANIES, MICHAELS STORES, MANUFACTURER
7 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall
8 hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

9 **VENUE AND JURISDICTION**

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

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

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

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

13 29. On September 24, 2015, plaintiff served a sixty-day notice of violation, together
14 with the accompanying certificate of merit, on MICHAELS COMPANIES, MICHAELS
15 STORES, California Attorney General’s Office, and the requisite public enforcement agencies
16 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
17 California are being exposed to DINP resulting from their reasonably foreseeable use of the
18 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
19 the harms associated with exposures to DINP, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
23 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
24 will continue in the future.

25 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
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1 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
2 violation.

3 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DINP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers in California are not exempt from the "clear and reasonable" warning requirements
7 of Proposition 65, yet DEFENDANTS provide no clear & reasonable warning.

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufacture, import, distribute, sell, and offer for sale in California contain DINP.

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

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

15 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
16 PRODUCTS exposes individuals to DINP through dermal contact and/or ingestion.

17 37. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
20 consumers in California.

21 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers in California who have been, or who will be, exposed to DINP through dermal
23 contact and/or ingestion resulting from their use of the PRODUCTS.

24 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
25 directly by California voters, consumers exposed to DINP through dermal contact and/or
26 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
27 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
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1 for which they have no plain, speedy, or adequate remedy at law.

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

5 41. 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” in accordance with title 27 of the California Code of Regulations, section
17 25601 *et seq.*, regarding the harms associated with exposures to DINP;

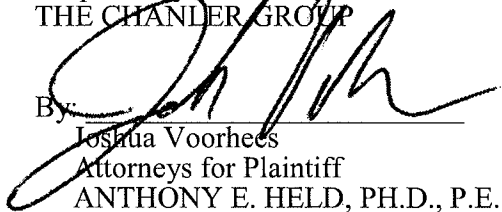
18 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
19 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
20 currently in the chain of commerce in California without a “clear and reasonable warning” as
21 defined by California Code of Regulations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

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

23 5. That the Court grant such other and further relief as may be just and proper.
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Dated: December 29, 2015

Respectfully submitted,
THE CHANDLER GROUP

By: 
Joshua Voorhees
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.

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