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FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Ciceli Johnson
Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION
15

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

17 Plaintiff,

18 v.

19 SMARTHEALTH, INC.,

20 Defendant.

Case No. RG16808925

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 including, but not limited to, the *DrRecommended.com Allerderm PF Vinyl Gloves, AL 1013C*.
2 All such vinyl/PVC gloves containing the LISTED CHEMICAL are referred to collectively
3 hereinafter as "PRODUCTS."

4 7. Defendant's failure to warn consumers in the State of California of the health
5 hazards associated with exposures to the LISTED CHEMICAL in conjunction with defendants'
6 sales of the PRODUCTS are violations of Proposition 65, and subject defendant to enjoinder
7 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
8 & (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 the LISTED
12 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 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 she brings this action in the public
19 interest pursuant to Health and Safety Code section 25249.7(d).

20 11. Defendant SMARTHEALTH, INC. ("SMARTHEALTH") is a person in the
21 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
22 25249.11.

23 12. SMARTHEALTH manufactures, imports, distributes, sells, and/or offers the
24 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.

1 VENUE AND JURISDICTION

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

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

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

18 FIRST CAUSE OF ACTION

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

20 16. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 15, inclusive.

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

26 18. Proposition 65 states, "[n]o person in the course of doing business shall
27 knowingly and intentionally expose any individual to a chemical known to the state to cause
28

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

3 19. On December 1, 2015, plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on SMARTHEALTH, the California Attorney
5 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
6 SMARTHEALTH’s sales of the PRODUCTS, consumers in the State of California are being
7 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
8 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
9 the harms associated with exposures to the LISTED CHEMICAL, as required by Proposition
10 65.

11 20. SMARTHEALTH manufactures, imports, distributes, sells, and offers the
12 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
13 SMARTHEALTH’s violations have continued beyond its receipt of plaintiff’s sixty-day notice
14 of violation. As such, SMARTHEALTH’s violations are ongoing and continuous in nature and,
15 unless enjoined will continue in the future.

16 21. After receiving plaintiff’s sixty-day notice of violation, no public enforcement
17 agency has commenced and diligently prosecuted a cause of action against SMARTHEALTH
18 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
19 violation.

20 22. The PRODUCTS that SMARTHEALTH manufactures, imports, distributes, sells,
21 and/or offers for sale or use in California cause exposures to the LISTED CHEMICAL as a
22 result of the reasonably foreseeable use of the PRODUCTS. Such exposures caused by
23 SMARTHEALTH and endured by consumers in California are not exempt from the “clear and
24 reasonable” warning requirements of Proposition 65, yet SMARTHEALTH provides no
25 warning. SMARTHEALTH’s violations of Proposition 65, resulting from its failure to provide
26 warnings to consumers exposed to the LISTED CHEMICAL from the PRODUCTS have
27 continued since as far back as December 20, 2014.
28

1 23. SMARTHEALTH knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and/or offer for sale in California contain the LISTED
3 CHEMICAL.

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

6 25. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
7 continues to cause, consumer exposures to the LISTED CHEMICAL, as defined by title 27 of
8 the California Code of Regulations, section 25602(b).

9 26. SMARTHEALTH knows that the normal and reasonably foreseeable use of the
10 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
11 ingestion.

12 27. SMARTHEALTH intends that exposures to the LISTED CHEMICAL from the
13 reasonably foreseeable use of the PRODUCTS will occur by its deliberate, non-accidental
14 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
15 for sale or use to consumers in California.

16 28. SMARTHEALTH failed to provide a "clear and reasonable warning" to those
17 consumers in California who have been, or who will be, exposed to the LISTED CHEMICAL
18 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

19 29. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
20 directly by California voters, consumers exposed to the LISTED CHEMICAL through dermal
21 contact and/or ingestion as a result of their use of the PRODUCTS that SMARTHEALTH sold
22 without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer,
23 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

24 30. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
25 above-described acts, SMARTHEALTH is liable for a maximum civil penalty of \$2,500 per day
26 for each violation.

