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FILED
San Francisco County Superior Court

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CLERK OF THE COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

KRAFT TOOL COMPANY; and DOES 1-150,
inclusive,

Defendants.

Case No. **CGC 17-556311**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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1 8. All tools with vinyl/PVC tool grips identified above, shall hereinafter be collectively
2 referred to as the "PRODUCTS."

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

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

12 11. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil penalties
13 against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 13. Defendant KRAFT TOOL COMPANY ("KRAFT") is a person in the course of doing
20 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

21 14. KRAFT manufactures, distributes, ships, sells and/or offers the PRODUCTS for sale or
22 use in the State of California, or implies by its conduct that it manufactures, distributes, ships, sells
23 and/or offers the PRODUCTS for sale or use in the State of California.

24 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
26 25249.11.

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

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

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

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

20. RETAILER DEFENDANTS offer one or more of the PRODUCTS for sale to individuals in the State of California.

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

22. **KRAFT, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS** shall, where appropriate, collectively be referred to as **“DEFENDANTS.”**

VENUE AND JURISDICTION

23. Venue is proper in San Francisco County Superior Court, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco County with respect to the PRODUCTS.

24. 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.

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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

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

29. On September 29, 2016, plaintiff served a sixty-day notice of violation, together with the requisite certificate of merit, on KRAFT and certain public enforcement agencies alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of California were being exposed to DINP from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first having been provided with a "clear and reasonable warning" regarding the harms associated with such exposures, as required by Proposition 65.

1 30. DEFENDANTS manufacture, distribute, ship, sell and offer the PRODUCTS for sale
2 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations continued
3 beyond their receipt of plaintiff's sixty-day notice of violation. DEFENDANTS' violations are
4 ongoing and continuous in nature, and, as such, will continue in the future.

5 31. After receiving plaintiff's sixty-day notice of violation, none of the appropriate public
6 enforcement agencies have commenced and diligently prosecuted a cause of action against
7 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of
8 plaintiff's notice of violation.

9 32. The PRODUCTS that DEFENDANTS manufacture, distribute, ship, sell, and offer for
10 sale or use in California cause exposures to DINP as a result of the reasonably foreseeable use of the
11 PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers and other
12 individuals in California are not exempt from the "clear and reasonable" warning requirements of
13 Proposition 65, yet DEFENDANTS' PRODUCTS continued to be sold without the requisite
14 warning.

15 33. DEFENDANTS knew or should have known that the that the PRODUCTS they
16 manufactured, distributed, shipped, sold, and offered for sale or use in California contained DINP.

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

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

22 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
23 PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

24 37. DEFENDANTS intended that exposures to DINP from the reasonably foreseeable use
25 of the PRODUCTS would occur, by their deliberate, non-accidental participation in the manufacture,
26 distribution, shipment, sale and offering of the PRODUCTS for sale or use to consumers and other
27 individuals in California.

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1 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
2 and other individuals in California who were or who would become exposed to DINP through
3 dermal contact and/or ingestion resulting from their use of the PRODUCTS.

4 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
5 directly by California voters, individuals exposed to DINP through dermal contact and/or ingestion
6 as a result of their use of the PRODUCTS that DEFENDANTS manufactured, distributed, shipped,
7 sold and offered for sale or use without a "clear and reasonable" health hazard warning, have
8 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate
9 remedy at law.

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

13 41. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
14 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

15 **PRAYER FOR RELIEF**

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

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

19 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
20 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
21 for sale or use in California without first providing a "clear and reasonable warning" in accordance
22 with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms
23 associated with exposures to DINP;

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


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

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

Dated: January 5, 2017

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle
Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.