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**FILED**

APR 24 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Segura, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

**BY FAX**

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

Plaintiff,

v.

FORNEY INDUSTRIES, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. CIV 1901595

**COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *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 of the health hazards caused by exposures to  
5 di(2-ethylhexyl)phthalate (DEHP), a toxic chemical found in and on goggles with vinyl  
6 components sold by defendants in California.

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

14 3. Detectable levels of DEHP are found in and on goggles with vinyl components that  
15 defendants manufacture, distribute, and offer for sale to consumers and other individuals  
16 throughout the State of 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 the  
20 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to  
21 such individual . . .” Health & Safety Code § 25249.6.

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became subject  
24 to the “clear and reasonable warning” requirements of the act one year later on October 24, 2004.  
25 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, goggles with vinyl components including, but not limited to, the  
28 *Forney Dust Goggles, #55310, UPC #0 32277 55310 1*. All such goggles with vinyl components

1 containing DEHP that are manufactured, distributed, sold, or offered for sale by defendants in the  
2 State of California are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

14 **PARTIES**

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

19 11. Defendant FORNEY INDUSTRIES, INC. (FORNEY) is a person in the course of  
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. 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 sections 25249.6 and  
26 25249.11.

27 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
28 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,

1 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale  
2 or use in California.

3 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person in  
4 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
5 25249.11.

6 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
7 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for  
8 sale or use in the State of California, or each implies by its conduct that it distributes, exchanges,  
9 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or  
10 retailers for sale or use in the State of California.

11 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the  
12 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
13 25249.11.

14 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
15 individuals in the State of California.

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

21 20. FORNEY, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
22 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as  
23 the "DEFENDANTS."

24 **VENUE AND JURISDICTION**

25 21. Venue is proper in the Superior Court for the County of Marin pursuant to Code of  
26 Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent  
27 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more  
28 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because

1 DEFENDANTS conducted, and continue to conduct, business in Marin with respect to the  
2 PRODUCTS.

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

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

13 **FIRST CAUSE OF ACTION**

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

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 23, inclusive.

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

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

24 27. On October 10, 2018, plaintiff served a 60-Day Notice of Violation, (the Notice),  
25 together with the requisite certificate of merit, on FORNEY, the California Attorney General’s  
26 Office, and the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’  
27 sales of the PRODUCTS, consumers in the State of California are being exposed to DEHP  
28 resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers first

1 receiving a “clear and reasonable warning” regarding the harms associated with exposures to  
2 DEHP, as required by Proposition 65.

3 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
4 sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’ violations  
5 have continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are  
6 ongoing and continuous in nature and, unless enjoined will continue in the future.

7 29. After receiving plaintiff’s Notice, no public enforcement agency has commenced  
8 and diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to  
9 enforce the alleged violations that are the subject of plaintiff’s Notice.

10 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
11 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
12 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
13 consumers and other individuals in California are not exempt from the “clear and reasonable”  
14 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they  
16 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

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

19 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
20 continues to cause, consumer product exposures to DEHP, as defined by title 27 of the California  
21 Code of Regulations, section 25600.1(e).

22 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
23 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

24 35. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable  
25 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
26 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
27 consumers in California.

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1           36.     DEFENDANTS failed to provide a “clear and reasonable warning” to those  
2 consumers in California who have been, or who will be, exposed to DEHP through dermal contact  
3 and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

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**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;
2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25600 *et seq.*, regarding the harms associated with exposures to DEHP;
3. That the Court, pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25600 *et seq.*;
4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
5. That the Court grant such other and further relief as may be just and proper.

Dated: April 24, 2019

Respectfully submitted,  
THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for plaintiff  
ANTHONY E. HELD, PH.D., P.E.