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EMPOWERED  
JUDICIAL  
ALAMEDA COUNTY

FEB 16 2015

CLERK OF THE SUPERIOR COURT  
By Cheali Johnson  
Deputy

11  
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 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 diisononyl phthalate  
5 ("DINP"), a toxic chemical found in vinyl/PVC gloves sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's 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 defendant's 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 defendant's products, are referred to hereinafter as "consumers."

13 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that  
14 defendant manufactures, distributes, and/or offers for sale to consumers throughout the State of  
15 California.

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

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

26 6. Defendant manufactures, distributes, imports, sells, and/or offers for sale without  
27 health hazard warnings in California, vinyl/PVC gloves containing the LISTED CHEMICAL  
28

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.

1           31. As a consequence of the above-described acts, Health and Safety Code  
2 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4   PRAYER FOR RELIEF

5           Wherefore, plaintiff prays for judgment against SMARTHEALTH as follows:

6           1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
7 civil penalties against SMARTHEALTH in the amount of \$2,500 per day for each violation;

8           2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
9 preliminarily and permanently enjoin SMARTHEALTH from manufacturing, distributing, or  
10 offering the PRODUCTS for sale or use in California without first providing a “clear and  
11 reasonable warning” in accordance with title 27 of the California Code of Regulations, section  
12 25601 *et seq.*, regarding the harms associated with exposures to the LISTED CHEMICAL;

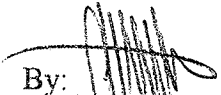
13           3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
14 preliminary and permanent injunctions mandating that SMARTHEALTH recall all PRODUCTS  
15 currently in the chain of commerce in California without a “clear and reasonable warning” as  
16 defined by California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

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

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

19  
20 Dated: February 10, 2016

Respectfully submitted,  
THE CHANLER GROUP

21  
22   
By: \_\_\_\_\_  
Christopher Tuttle  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.



Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse  
1225 Fallon Street  
Oakland, CA 94612

Receipt Nbr: 677027  
Clerk: cijohnson  
Date: 02/16/2016

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Type	Case Number	Description	Amount
Filing	RG16803925	Complaint - Other	\$435.00

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Total Amount Due: \$435.00  
Prior Payment:  
Current Payment: \$435.00  
Balance Due: \$.00  
Overage:  
Excess Fee:  
Change:

Payment Method:  
Cash:  
Check: \$435.00