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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
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11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 Plaintiff,)

14 v.)

15 ACME UNITED CORPORATION; ADENNA)
16 INC.; BECTON, DICKINSON & COMPANY;)
17 BETTY DAIN CREATIONS, INC.;)
18 DURASAFE INC.; IMPACT PRODUCTS,)
19 LLC; INVACARE CORPORATION;)
20 MICROFLEX CORPORATION; SHELBY)
GROUP INTERNATIONAL DBA MCR)
SAFETY; UNITED STATIONERS SUPPLY)
CO.; and Defendant DOES 1 through 200,)
inclusive,)

21 Defendants.)
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Case No. CEC-08-482792

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2008 DEC -9 AM 12:58

CLERK

MAY - 8 2009 - 9 AM

BY:

MAY 10 2009

DEPARTMENT 212

1 Plaintiff Center for Environmental Health (“Plaintiff”), in the public interest, and
2 based on information and belief and investigation of counsel, except for information based on
3 personal knowledge, hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn
6 individuals in California that they are being exposed to Di(2-ethylhexyl) phthalate (“DEHP”), a
7 chemical known to the State of California to cause cancer and birth defects or other reproductive
8 harm. Such exposures have occurred, and continue to occur, through the manufacture,
9 distribution, sale and consumer use of Defendants’ vinyl gloves containing DEHP (the
10 “Products”). Consumers are exposed to DEHP when they use or otherwise handle the Products.

11 2. Under California’s Proposition 65, Health and Safety Code § 25249.5, *et*
12 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California to
13 chemicals known to the State to cause cancer and/or birth defects or other reproductive harm
14 without providing clear and reasonable warnings to individuals prior to their exposure. Despite
15 the fact that Defendants’ Products expose consumers to DEHP, Defendants provide no warnings
16 whatsoever about the reproductive hazards associated with DEHP exposure. Defendants’
17 conduct thus violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

18 **PARTIES**

19 3. Plaintiff is a non-profit corporation dedicated to protecting the public from
20 environmental health hazards and toxic exposures. Plaintiff is based in Oakland, California, and
21 incorporated under the laws of the State of California. Plaintiff is a “person” within the meaning
22 of Health & Safety Code § 25249.11(a) and brings this enforcement action in the public interest
23 pursuant to Health & Safety Code § 25249.7(d). Plaintiff is a nationally recognized non-profit
24 environmental advocacy group that has prosecuted a large number of Proposition 65 cases in the
25 public interest. These cases have resulted in significant public benefit, including reformulation of
26 thousands of products to remove toxic chemicals and to make them safer. Plaintiff also provides
27 information to Californians about the health risks associated with exposure to hazardous
28 substances, where manufacturers and other responsible parties fail to do so.

1 4. Defendant ACME UNITED CORPORATION (“Acme”) is a “person in
2 the course of doing business” within the meaning of Health & Safety Code § 25249.11(b). Acme
3 manufactures, distributes and/or sells the Products for sale and use in California.

4 5. Defendant ADENNA INC. (“Adenna”) is a “person in the course of doing
5 business” within the meaning of Health & Safety Code § 25249.11(b). Adenna manufactures,
6 distributes and/or sells the Products for sale and use in California.

7 6. Defendant BECTON, DICKINSON & COMPANY (“BDC”) is a “person
8 in the course of doing business” within the meaning of Health & Safety Code § 25249.11(b).
9 BDC manufactures, distributes and/or sells the Products for sale and use in California.

10 7. Defendant BETTY DAIN CREATIONS, INC. (“Betty Dain”) is a “person
11 in the course of doing business” within the meaning of Health & Safety Code § 25249.11(b).
12 Betty Dain manufactures, distributes and/or sells the Products for sale and use in California.

13 8. Defendant DURASAFE INC. (“Durasafe”) is a “person in the course of
14 doing business” within the meaning of Health & Safety Code § 25249.11(b). Durasafe
15 manufactures, distributes and/or sells the Products for sale and use in California.

16 9. Defendant IMPACT PRODUCTS, LLC (“Impact Products”) is a “person
17 in the course of doing business” within the meaning of Health & Safety Code § 25249.11(b).
18 Impact Products manufactures, distributes and/or sells the Products for sale and use in California.

19 10. Defendant INVACARE CORPORATION (“Invacare”) is a “person in the
20 course of doing business” within the meaning of Health & Safety Code § 25249.11(b). Invacare
21 manufactures, distributes and/or sells the Products for sale and use in California.

22 11. Defendant MICROFLEX CORPORATION (“Microflex”) is a “person in
23 the course of doing business” within the meaning of Health & Safety Code § 25249.11(b).
24 Microflex manufactures, distributes and/or sells the Products for sale and use in California.

25 12. Defendant SHELBY GROUP INTERNATIONAL DBA MCR SAFETY
26 (“Shelby Group”) is a “person in the course of doing business” within the meaning of Health &
27 Safety Code § 25249.11(b). Shelby Group manufactures, distributes and/or sells the Products for
28 sale and use in California.

1 defects, or other reproductive harm.” Proposition 65, § 1(b).

2 21. To effectuate this goal, Proposition 65 prohibits exposing people to
3 chemicals listed by the State of California as known to cause cancer and/or birth defects or other
4 reproductive harm above certain levels without a “clear and reasonable warning” unless the
5 business responsible for the exposure can prove that it fits within a statutory exemption. Health &
6 Safety Code § 25249.6 states, in pertinent part:

7 No person in the course of doing business shall knowingly and
8 intentionally expose any individual to a chemical known to the state
9 to cause cancer or reproductive toxicity without first giving clear
and reasonable warning to such individual. . .

10 22. On January 1, 1988, the State of California officially listed DEHP as a
11 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical
12 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement
13 regarding cancer hazards under Proposition 65. 27 California Code of Regulations (“C.C.R.”)
14 § 27001(c); Health & Safety Code § 25249.10(b).

15 23. On October 24, 2003, the State of California officially listed DEHP as a
16 chemical known to cause reproductive toxicity. DEHP is specifically identified as a reproductive
17 toxicant under two subcategories: (1) “developmental reproductive toxicity,” which means that it
18 tends to harm the developing fetus and (2) “male reproductive toxicity,” which means that it tends
19 to harm the male reproductive system. 27 C.C.R. § 27001(c). On October 24, 2004, one year
20 after it was listed as a chemical known to cause reproductive toxicity, DEHP became subject to
21 the clear and reasonable warning requirement regarding reproductive toxins under Proposition 65.
22 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

23 24. Defendants’ Products contain sufficient quantities of DEHP such that
24 individuals who handle the Products are exposed to DEHP through the average use of the
25 Products. For example, ordinary consumers absorb DEHP through the skin when they touch, use,
26 handle, put on, wear and/or take off the Products. Ordinary consumers also ingest DEHP when
27 they put the Products in their mouths during normal use, including when consumers put on, wear
28 and/or take off the Products. Ordinary consumers also ingest DEHP via hand to mouth contact

1 after they touch, use, handle, put on, wear and/or take off the Products or touch other objects that
2 they then put in their mouths.

3 25. Any person acting in the public interest has standing to enforce violations
4 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
5 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
6 action within such time. Health & Safety Code § 25249.7(d).

7 26. More than sixty days before naming each Defendant in this Complaint,
8 Plaintiff provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney
9 General, the District Attorneys of every county in California, the City Attorneys of every
10 California city with a population greater than 750,000 and to the Defendant named. In
11 compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each of the
12 Notices included the following information: (1) the name and address of the violators; (2) the
13 statute violated; (3) the time period during which violations occurred; (4) specific descriptions of
14 the violations, including (a) the routes of exposure to DEHP from the Products, and (b) the
15 specific type of Products sold and used in violation of Proposition 65; and (5) the name of the
16 specific Proposition 65-listed chemical (DEHP) that is the subject of the violations described in
17 each of the Notices.

18 27. Plaintiff also sent a Certificate of Merit for each Notice of Violation to the
19 California Attorney General, the District Attorneys of every county in California, the City
20 Attorneys of every California city with a population greater than 750,000, and the Defendants
21 named in the Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R.
22 § 3101, each Certificate of Merit certified that Plaintiff's counsel: (1) has consulted with one or
23 more persons with relevant and appropriate experience or expertise who reviewed facts, studies
24 or other data regarding the exposures to DEHP alleged in the Notice; and (2) based on the
25 information obtained through such consultations, believes that there is a reasonable and
26 meritorious case for a citizen enforcement action based on the facts alleged in the attached Notice.
27 In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the Certificate
28 served on the Attorney General included factual information – provided on a confidential basis –

1 persons in the course of doing business within the meaning of Health & Safety Code § 25249.11.

2 37. Defendants know that average use of the Products will expose users of the
3 Products to DEHP. Defendants intend that the Products be used in a manner that results in users
4 of the Products being exposed to DEHP contained in the Products.

5 38. Defendants have failed, and continue to fail, to provide clear and
6 reasonable warnings regarding the carcinogenicity and/or reproductive toxicity of the DEHP
7 contained in their Products.

8 39. DEHP is a chemical listed by the State of California as known to cause
9 cancer and birth defects and other reproductive harm.

10 40. By committing the acts alleged above, the Defendants have at all times
11 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing
12 individuals to DEHP without first giving clear and reasonable warnings to such individuals
13 regarding the carcinogenicity and/or reproductive toxicity of DEHP.

14 Wherefore, Plaintiff prays judgment against the Defendants, as set forth hereafter.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff prays for judgment against Defendants as follows:

17 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
18 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
19 of Proposition 65 according to proof;

20 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
21 preliminarily and permanently enjoin Defendants from offering the Products for sale in California
22 without providing clear and reasonable warnings, as Plaintiff shall specify in further application to
23 the Court;

24 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
25 Defendants to take action to stop ongoing unwarned exposures to DEHP resulting from use of
26 Products sold by Defendants, as Plaintiff shall specify in further application to the Court;

27 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 and/or any
28 other applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

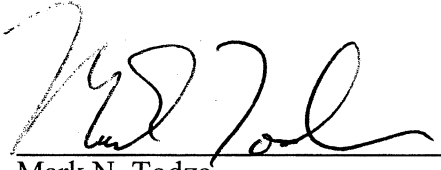
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5. That the Court utilize its inherent equitable power to grant such other and further relief as may be just and proper.

Dated: December 9, 2008

Respectfully submitted,

LEXINGTON LAW GROUP, LLP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH