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**FILED**

**FEB 05 2010**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Bond, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF MARIN  
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12 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

13 Plaintiff, )

14 v. )

15 )  
16 LACROSSE FOOTWEAR, INC.; and DOES 1 )  
through 200, inclusive, )

17 Defendants. )  
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Case No. CIV1000641

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

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 use of Defendants’ rainwear that contains DEHP (the “Products”).

10 Consumers are exposed to DEHP when they wear, touch, 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  
13 to chemicals known to the State to cause cancer and birth defects or other reproductive harm  
14 without providing clear and reasonable warnings to individuals prior to their exposure.

15 Defendants introduce Products contaminated with significant quantities of DEHP into the  
16 California marketplace, exposing consumers of their Products to DEHP.

17 3. Despite the fact that Defendants’ Products expose consumers to DEHP,  
18 Defendants provide no warnings about the carcinogenic or reproductive hazards associated with  
19 DEHP exposure. Defendants’ conduct thus violates the warning provision of Proposition 65.  
20 Health & Safety Code §25249.6.

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH is a non-profit  
23 corporation dedicated to protecting the public from environmental health hazards and toxic  
24 exposures. Plaintiff is based in Oakland, California, and incorporated under the laws of the State  
25 of California. Plaintiff is a “person” within the meaning of Health & Safety Code §25249.11(a)  
26 and brings this enforcement action in the public interest pursuant to Health & Safety Code  
27 §25249.7(d). Plaintiff is a nationally recognized non-profit environmental advocacy group that  
28 has prosecuted a large number of Proposition 65 cases in the public interest. These cases have



1 **BACKGROUND FACTS**

2 12. The People of the State of California have declared by initiative under  
3 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth  
4 defects, or other reproductive harm.” Proposition 65, §1(b).

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

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

13 14. On January 1, 1988, the State of California officially listed DEHP as a  
14 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical  
15 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement  
16 regarding cancer hazards under Proposition 65. 27 California Code of Regulations (“C.C.R.”)  
17 §27001(c); Health & Safety Code §25249.10(b).

18 15. On October 24, 2003, the State of California officially listed DEHP as a  
19 chemical known to cause reproductive toxicity. DEHP is specifically identified as a reproductive  
20 toxicant under two subcategories: (1) “developmental reproductive toxicity,” which means that it  
21 tends to harm the developing fetus and (2) “male reproductive toxicity,” which means that it  
22 tends to harm the male reproductive system. 27 C.C.R. §27001(c). On October 24, 2004, one  
23 year after it was listed as a chemical known to cause reproductive toxicity, DEHP became subject  
24 to the clear and reasonable warning requirement regarding reproductive toxins under Proposition  
25 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

26 16. Defendants’ Products contain sufficient quantities of DEHP such that  
27 individuals who wear, touch, use, or otherwise handle the Products are exposed to DEHP through  
28 the average use of the Products. For example, ordinary consumers absorb DEHP through the

1 skin when they touch, use, handle, put on, wear and/or take off the Products. Ordinary  
2 consumers also ingest DEHP via hand-to-mouth contact after they touch, use, handle, put on,  
3 wear and/or take off the Products or touch other objects that they then put in their mouths.  
4 Ordinary consumers also inhale DEHP fumes when they touch, use, handle, put on, wear and/or  
5 take off the Products.

6 17. No clear and reasonable warning is provided with the Products regarding  
7 the carcinogenic or reproductive hazards of DEHP.

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

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

23 20. Plaintiff also sent a Certificate of Merit for each Notice of Violation to the  
24 California Attorney General, the District Attorneys of every county in California, the City  
25 Attorneys of every California city with a population greater than 750,000, and the Defendants  
26 named in the Notice. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R.  
27 §3101, each Certificate of Merit certified that Plaintiff's counsel: (1) has consulted with one or  
28 more persons with relevant and appropriate experience or expertise who reviewed facts, studies

1 or other data regarding the exposures to DEHP alleged in the Notice; and (2) based on the  
2 information obtained through such consultations, believes that there is a reasonable and  
3 meritorious case for a citizen enforcement action based on the facts alleged in each of the  
4 Notices. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, the  
5 Certificate served on the Attorney General included factual information – provided on a  
6 confidential basis – sufficient to establish the basis for the Certificates, including the identity of  
7 the person(s) consulted by Plaintiff’s counsel and the facts, studies or other data reviewed by  
8 such persons.

9           21. Under Proposition 65, an exposure is “knowing” where the party  
10 responsible for such exposure has:

11                           knowledge of the fact that a discharge of, release of, or exposure to  
12                           a chemical listed pursuant to Health and Safety Code §25249.8(a)  
13                           of the Act is occurring. No knowledge that the discharge, release  
                              or exposure is unlawful is required.

14           27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
15 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
16 §12201).

17           22. Defendants both know and intend that the Products contain DEHP. DEHP  
18 is an intended ingredient that makes up a substantial percentage of the Products.

19           23. Defendants know that individuals will wear, touch, use, and otherwise  
20 handle the Products, thus exposing them to DEHP.

21           24. Defendants have also been informed of the DEHP in their Products by the  
22 60-Day Notice of Violation served on them by Plaintiff.

23           25. Nevertheless, Defendants continue to expose consumers to DEHP without  
24 prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of DEHP.

25           26. None of the public prosecutors with the authority to prosecute violations  
26 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the  
27 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claim asserted in the  
28 Notice.



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

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

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

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

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

Dated: February 5, 2010

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL  
HEALTH