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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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BY: D. STORPE  
DEPT

CASE MANAGEMENT CONFERENCE SET

APR 09 2010 - 9:00 AM

DEPARTMENT 212

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10 CENTER FOR ENVIRONMENTAL HEALTH

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO

CGC-09-494337

13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 *A NON-PROFIT Corporation* )  
15 Plaintiff, )

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

16 v. )

17 BASIC INTERNATIONAL, INC. DBA BASIC )  
18 MEDICAL INDUSTRIES, INC.; DASH )  
19 MEDICAL GLOVES, INC.; and Defendant )  
20 DOES 1 through 200, inclusive, )

Health & Safety Code § 25249.6, et seq.

(Other)

21 Defendants. )  
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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 **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 and/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 state  
12 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 tends  
22 to harm the male reproductive system. 27 C.C.R. § 27001(c). On October 24, 2004, one year  
23 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 handle the Products are exposed to DEHP through the average use of the  
28 Products. The route of exposure for the violations is dermal absorption through the skin when

1 consumers touch, use, handle, put on, wear and/or take off the Products; direct ingestion when  
2 consumers place their hands in their mouths while wearing the Products or otherwise place the  
3 Products in their mouths; and ingestion via hand-to-mouth contact after they touch, use, handle,  
4 put on, wear and/or take off the Products or touch other objects that they then put in their  
5 mouths.

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 Defendant named. 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 the attached Notice.  
4 In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the Certificate  
5 served on the Attorney General included factual information – provided on a confidential basis –  
6 sufficient to establish the basis for the Certificates, including the identity of the person(s)  
7 consulted by Plaintiff's counsel and the facts, studies or other data reviewed by such persons.

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

10                           knowledge of the fact that a[n] . . . exposure to a chemical listed  
11                           pursuant to [Health and Safety Code § 25249.8(a)] is occurring.  
12                           No knowledge that the . . . exposure is unlawful is required.

13 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
14 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
15 § 12201).

16           22. Defendants both know and intend that the Products contain DEHP. The  
17 Products typically contain DEHP to provide the Products with flexibility. DEHP is an intended  
18 ingredient that makes up a substantial percentage of the Products.

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

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

23           25. Nevertheless, Defendants have exposed consumers and continue to expose  
24 consumers to DEHP without providing clear and reasonable warnings regarding the cancer and/or  
25 reproductive hazards of DEHP.

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



1 **PRAYER FOR RELIEF**

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

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

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

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

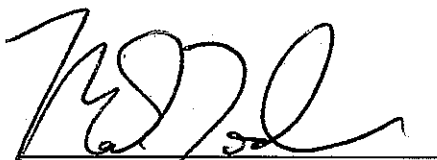
13 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 and/or any  
14 other applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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

17  
18 Dated: November 9, 2009

Respectfully submitted,

19 LEXINGTON LAW GROUP

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22 Mark N. Todzo  
23 Attorneys for Plaintiff  
24 CENTER FOR ENVIRONMENTAL HEALTH