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Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MAPA SPONTEX, INC.; VWR, INC.; VWR )  
INTERNATIONAL, INC.; VWR )  
INTERNATIONAL, LLC; and DOES 1 through )  
200, inclusive, )  
 )  
Defendants. )

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

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*  
(Other)

ENDORSED  
FILED  
San Francisco County Superior Court

MAR 10 2010

CLERK OF THE COURT  
BY: DEBORAH STEPPE  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET  
AUG 13 2010 - 9 AM  
DEPARTMENT 212

CGC-10-497670

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  
13 to 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  
26 of thousands of products to remove toxic chemicals and to make them safer. Plaintiff also  
27 provides 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 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally  
2 avails itself of the California market through the sale, marketing or use of the Products in  
3 California and/or by having such other contacts with California so as to render the exercise of  
4 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
5 substantial justice.

6 13. Venue is proper in the San Francisco Superior Court because one or more  
7 of the violations and threatened violations arise in the County of San Francisco.

### 8 BACKGROUND FACTS

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

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

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

20 16. On January 1, 1988, the State of California officially listed DEHP as a  
21 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical  
22 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement  
23 regarding cancer hazards under Proposition 65. 27 California Code of Regulations (“C.C.R.”)  
24 § 27001(c); Health & Safety Code § 25249.10(b).

25 17. On October 24, 2003, the State of California officially listed DEHP as a  
26 chemical known to cause reproductive toxicity. DEHP is specifically identified as a reproductive  
27 toxicant under two subcategories: (1) “developmental reproductive toxicity,” which means that it  
28 tends to harm the developing fetus and (2) “male reproductive toxicity,” which means that it

1 tends to harm the male reproductive system. 27 C.C.R. § 27001(c). On October 24, 2004, one  
2 year after it was listed as a chemical known to cause reproductive toxicity, DEHP became subject  
3 to the clear and reasonable warning requirement regarding reproductive toxins under Proposition  
4 65. 27 C.C.R. § 27001(c); Health & Safety Code § 25249.10(b).

5           18. Defendants' Products contain sufficient quantities of DEHP such that  
6 individuals who handle the Products are exposed to DEHP through the average use of the  
7 Products. The route of exposure for the violations is dermal absorption through the skin when  
8 consumers touch, use, handle, put on, wear and/or take off the Products; direct ingestion when  
9 consumers place their hands in their mouths while wearing the Products or otherwise place the  
10 Products in their mouths; and ingestion via hand-to-mouth contact after they touch, use, handle,  
11 put on, wear and/or take off the Products or touch other objects that they then put in their mouths.

12           19. No clear and reasonable warning is provided with the Products regarding  
13 the carcinogenic or reproductive hazards of DEHP.

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

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

1                   22.     Plaintiff also sent a Certificate of Merit for each Notice of Violation to the  
2 California Attorney General, the District Attorneys of every county in California, the City  
3 Attorneys of every California city with a population greater than 750,000, and the Defendants  
4 named in the Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R.  
5 § 3101, each Certificate of Merit certified that Plaintiff's counsel: (1) has consulted with one or  
6 more persons with relevant and appropriate experience or expertise who reviewed facts, studies  
7 or other data regarding the exposures to DEHP alleged in the Notice; and (2) based on the  
8 information obtained through such consultations, believes that there is a reasonable and  
9 meritorious case for a citizen enforcement action based on the facts alleged in the attached  
10 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, the  
11 Certificate served on the Attorney General included factual information – provided on a  
12 confidential basis – sufficient to establish the basis for the Certificates, including the identity of  
13 the person(s) consulted by Plaintiff's counsel and the facts, studies or other data reviewed by  
14 such persons.

15                   23.     Under Proposition 65, an exposure is “knowing” where the party  
16 responsible for such exposure has:

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

20                   27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
21                   Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
22                   § 12201).

23                   24.     Defendants both know and intend that the Products contain DEHP. The  
24                   Products typically contain DEHP to provide the Products with flexibility. DEHP is an intended  
25                   ingredient that makes up a substantial percentage of the Products.

26                   25.     Defendants both know and intend that individuals will handle, wear, and  
27                   otherwise use the Products, thus exposing them to DEHP.

28                   26.     Defendants have been informed of the DEHP in their Products by the 60-

1 Day Notice of Violation served on them by Plaintiff.

2 27. Nevertheless, Defendants have exposed consumers and continue to expose  
3 consumers to DEHP without providing clear and reasonable warnings regarding the cancer  
4 and/or reproductive hazards of DEHP.

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

9 29. Plaintiff has engaged in good-faith efforts to resolve the claims alleged  
10 herein prior to filing this complaint.

11 30. Any person “violating or threatening to violate” Proposition 65 may be  
12 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to  
13 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
14 violation will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil  
15 penalties up to \$2,500 per day for each violation of Proposition 65.

16 **FIRST CAUSE OF ACTION**

17 **(Violations of the Health & Safety Code § 25249.6)**

18 31. Plaintiff realleges and incorporates by reference as if specifically set forth  
19 herein Paragraphs 1 through 30, inclusive.

20 32. By placing the Products into the stream of commerce, Defendants are  
21 persons in the course of doing business within the meaning of Health & Safety Code § 25249.11.

22 33. Defendants know that average use of the Products will expose users of the  
23 Products to DEHP. Defendants intend that the Products be used in a manner that results in users  
24 of the Products being exposed to DEHP contained in the Products.

25 34. Defendants have failed, and continue to fail, to provide clear and  
26 reasonable warnings regarding the carcinogenicity and/or reproductive toxicity of the DEHP  
27 contained in their Products.

28 35. DEHP is a chemical listed by the State of California as known to cause

