

**ENDORSED
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San Francisco County Superior Court

MAR 22 2011

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BY: PARAM NATT
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1 LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
Lisa Burger, State Bar No. 239676
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
13)
Plaintiff,)
14)
v.)
15)
16 ROVIN MED, INC.; ROYAL PAPER)
PRODUCTS INC.; and DOES 1 through 200,)
inclusive,)
17)
Defendants.)
18)

Case No. GGC-11-509403

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

1 Plaintiff Center for Environmental Health, in the public interest, and based on
2 information and belief and investigation of counsel, except for information based on personal
3 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 & 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 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 carcinogenic or reproductive hazards associated with DEHP exposure.
17 Defendants' conduct thus violates the warning provision of Proposition 65. Health & Safety
18 Code § 25249.6.

19 **PARTIES**

20 3. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
21 non-profit corporation dedicated to protecting the public from environmental health hazards and
22 toxic exposures. CEH is based in Oakland, California, and incorporated under the laws of the
23 State of California. CEH is a "person" within the meaning of Health & Safety Code
24 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
25 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
26 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
27 cases have resulted in significant public benefit, including reformulation of thousands of
28 products to remove toxic chemicals and to make them safer. CEH also provides information to

1 Californians about the health risks associated with exposure to hazardous substances, where
2 manufacturers and other responsible parties fail to do so.

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

6 5. Defendant ROYAL PAPER PRODUCTS INC. is a “person in the course
7 of doing business” within the meaning of Health & Safety Code § 25249.11(b). Royal Paper
8 Products Inc. manufactures, distributes and/or sells the Products for sale and use in California.

9 6. DOES 1 through 200 are each a person in the course of doing business
10 within the meaning of Health & Safety Code § 25249.11. Defendant DOES 1 through 200 each
11 manufacture, distribute and/or sell the Products for sale or use in California.

12 7. DOES 1 through 200 are each identified herein by fictitious names. The
13 true names of DOES 1 through 200 are unknown to CEH at this time. When the identities of
14 DOES 1 through 200 are ascertained, the Complaint shall be amended to reflect their true names.

15 8. The defendants identified in paragraphs 4 and 5 and DOES 1 through 200
16 are collectively referred to herein as “Defendants.”

17 **JURISDICTION AND VENUE**

18 9. The Court has jurisdiction over this action pursuant to Health & Safety
19 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
20 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
21 to other trial courts.

22 10. This Court has jurisdiction over the Defendants because each is a business
23 entity that does sufficient business, has sufficient minimum contacts or otherwise intentionally
24 avails itself of the California market through the sale, marketing or use of the Products in
25 California and/or by having such other contacts with California so as to render the exercise of
26 jurisdiction over it by the California courts consistent with traditional notions of fair play and
27 substantial justice.

28 11. Venue is proper in the San Francisco Superior Court because one or more

1 of the violations and threatened violations arise in the County of San Francisco.

2 **BACKGROUND FACTS**

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

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

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

15 14. On January 1, 1988, the State of California officially listed DEHP as a
16 chemical known to cause cancer. On January 1, 1989, one year after it was listed as a chemical
17 known to cause cancer, DEHP became subject to the clear and reasonable warning requirement
18 regarding cancer hazards under Proposition 65. 27 California Code of Regulations (“C.C.R.”)
19 § 27001(c); Health & Safety Code § 25249.10(b).

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

28 16. Defendants’ Products contain sufficient quantities of DEHP such that
individuals who handle the Products are exposed to DEHP through the average use of the

1 Products. The routes of exposure for the violations are dermal absorption directly through the
2 skin when consumers wear, touch, use, or handle the Products; ingestion via hand-to-mouth
3 contact after consumers touch, use, or handle the Products; and direct ingestion when consumers
4 place their hands in their mouths while wearing the Products or otherwise place the Products in
5 their mouths. These exposures occur in homes, workplaces and everywhere else throughout
6 California where these Products are handled or used.

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

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

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

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

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

9 21. Defendants both know and intend that the Products contain DEHP. The
10 Products typically contain DEHP to provide the Products with flexibility. DEHP is an intended
11 ingredient that makes up a substantial percentage of the Products.

12 22. Defendants both know and intend that individuals will handle, wear, and
13 otherwise use the Products, thus exposing them to DEHP.

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

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

19 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
20 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
21 § 12201).

22 24. Defendants have been informed of the DEHP in their Products by CEH’s
23 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

24 25. As companies that manufacture, import, distribute and/or sell the Products
25 for use in the California marketplace, Defendants know or should know that the Products contain
26 DEHP and that individuals who use the Products will be exposed to DEHP. The DEHP
27 exposures to consumers who use the Products are a natural and foreseeable consequence of
28 Defendants’ placing the Products into the stream of commerce.

