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CENTER FOR ENVIRONMENTAL HEALTH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
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13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
14)
Plaintiff,)
15)
v.)
16)
SHOCK DOCTOR, INC.; DICK'S SPORTING)
17 GOODS, INC.; and Defendant DOES 1 through)
200, inclusive,)
18)
Defendants.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
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Case No. RG 15 756 764

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

(Other)

ENDORSED
FILED
ALAMEDA COUNTY

JAN 30 2015

CLERK OF THE SUPERIOR COURT

By Maria Carrera Deputy

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 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 lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of Defendants' football gloves made with leather,
10 vinyl, or imitation leather materials (the "Products"). Consumers, including children, are
11 exposed to Lead when they use, touch, or handle the Products.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects, or other reproductive harm
15 without providing clear and reasonable warnings to individuals prior to their exposure.
16 Defendants introduce Products contaminated with significant quantities of Lead into the
17 California marketplace, exposing consumers of their Products, some of whom are children, to
18 Lead.

19 3. Despite the fact that Defendants expose children and other people who
20 come into contact with the Products to Lead, Defendants provide no warnings whatsoever about
21 the carcinogenic or reproductive hazards associated with these Lead exposures. Defendants'
22 conduct thus violates the warning provision of Proposition 65. Health & Safety Code § 25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
25 non-profit corporation dedicated to protecting the public from environmental health hazards and
26 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
27 State of California. CEH is a "person" within the meaning of Health & Safety Code §
28 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety

1 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group
2 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases
3 have resulted in significant public benefit, including the reformulation of thousands of products
4 to remove toxic chemicals and to make them safer. CEH also provides information to
5 Californians about the health risks associated with exposure to hazardous substances, where
6 manufacturers and other responsible parties fail to do so.

7 5. Defendant SHOCK DOCTOR, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code § 25249.11. Shock Doctor, Inc.
9 manufactures, distributes, and/or sells the Products for sale or use in California.

10 6. Defendant DICK'S SPORTING GOODS, INC. is a person in the course of
11 doing business within the meaning of Health & Safety Code § 25249.11. Dick's Sporting Goods,
12 Inc. manufactures, distributes, and/or sells the Products for sale or use in California.

13 7. DOES 1 through 200 are each a person in the course of doing business
14 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture,
15 distribute, and/or sell the Products for sale or use in California.

16 8. The true names of DOES 1 through 200 are unknown to CEH at this time.
17 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

18 9. The entities identified in paragraphs 5 and 6 and DOES 1 through 200 are
19 collectively referred to herein as "Defendants."

20 **JURISDICTION AND VENUE**

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

25 11. This Court has jurisdiction over Defendants because each is a business
26 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise
27 intentionally avails itself of the California market through the sale, marketing, or use of the
28 Products in California and/or by having such other contacts with California so as to render the

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

3 12. Venue is proper in the Alameda Superior Court because one or more of the
4 violations arise in the County of Alameda.

5 **BACKGROUND FACTS**

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

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

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

17 15. On February 27, 1987, the State of California officially listed lead as a
18 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
19 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
20 the developing fetus, “female reproductive toxicity,” which means harm to the female
21 reproductive system, and “male reproductive toxicity,” which means harm to the male
22 reproductive system. 27 Cal. Code Regs. (“C.C.R.”) § 27001(c). On February 27, 1988, one
23 year after it was listed as a chemical known to cause reproductive toxicity, lead became subject to
24 the clear and reasonable warning requirement regarding reproductive toxicants under Proposition
25 65. *Ibid.*; Health & Safety Code § 25249.10(b).

26 16. On October 1, 1992, the State of California officially listed lead and lead
27 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
28 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear

1 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R. §
2 27001(b); Health & Safety Code § 25249.10(b).

3 17. There is no safe level of exposure to Lead and even minute amounts of
4 Lead exposure have been proven harmful to children and adults. *See, e.g.*, [http://water.epa.gov/
5 drink/contaminants/basicinformation/lead.cfm](http://water.epa.gov/drink/contaminants/basicinformation/lead.cfm). Lead in blood, even at very low levels, has been
6 found to be correlated with all causes of mortality, including cancer and cardiovascular disease.
7 *See, e.g.*, Menke, A., *et al.*, “Blood Lead Below 0.48 µmol/L (10 µg/dL) and Mortality Among
8 US Adults,” *Circulation* (September 2009) Vol. 114:13; Schober, S., *et al.*, “Blood Lead Levels
9 and Death from All Causes, Cardiovascular Disease, and Cancer,” *Environmental Health
10 Perspectives* (October 2006) Vol. 114:10; Cheung, M., “Blood Lead Concentration Correlates
11 with All Cause, All Cancer and Lung Cancer Mortality in Adults,” *Asian Pacific Journal of
12 Cancer Prevention* (2013) Vol. 14. Studies have repeatedly concluded that concentrations of
13 Lead in children’s blood previously deemed acceptable can have adverse health effects. *See, e.g.*,
14 Canfield, R.L., *et al.*, “Intellectual Impairment in Children with Blood Lead Concentrations
15 below 10 ug per Deciliter,” *New England Journal of Medicine* (2003) Vol. 348:16. Another
16 recent study found that childhood Lead exposure predicts intellectual functioning in early
17 adulthood in that adult IQ levels are inversely associated with blood Lead concentrations from
18 childhood. Mazumdar, M., *et al.*, “Low-Level Environmental Lead Exposure in Childhood and
19 Adult Intellectual Function: A Follow-Up Study,” *Environmental Health* (2011) Vol. 10:24; *see
20 also* Lanphear, B.P., *et al.*, “Subclinical Lead Toxicity in U.S. Children and Adolescents,”
21 *Neurodevelopmental Disabilities II Platform*, 2000 (finding that even the smallest detectable
22 amount of blood Lead levels in children can mean the difference between an A or B grade in
23 school).

24 18. Children show a greater sensitivity to Lead’s effects than do adults.
25 Adverse health impacts from Lead exposure generally occur in children at lower blood Lead
26 levels than in adults. Children absorb and retain more Lead in proportion to their weight than do
27 adults. The body accumulates Lead over a lifetime and releases it slowly, so even small doses
28 received in childhood, over time, can cause adverse health impacts, including but not limited to

1 reproductive toxicity, later in life. Young children also show a greater prevalence of iron
2 deficiency, a condition that can increase gastrointestinal absorption of Lead.

3 19. Defendants' Products contain sufficient quantities of Lead such that
4 consumers, including children, who use, touch, and/or handle the Products are exposed to Lead
5 through the average use of the Products. The route of exposure for the violations is direct
6 ingestion when consumers place their hands in their mouths while wearing the Products or
7 otherwise place the Products in their mouths; ingestion via hand-to-mouth contact after
8 consumers touch, wear, or handle the Products or items that have been in contact with the
9 Products; and dermal absorption directly through the skin when consumers wear, take on or off,
10 touch, or handle the Products. These exposures occur in homes, on playgrounds, and everywhere
11 else throughout California where the Products are worn, touched, or handled.

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

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

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

28 23. CEH also sent a Certificate of Merit for each Notice to the California

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

13 24. None of the public prosecutors with the authority to prosecute violations
14 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
15 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the
16 Notice.

17 25. Defendants both know and intend that individuals, including children, will
18 wear, touch, and/or handle the Products, thus exposing them to Lead.

19 26. Under Proposition 65, an exposure is “knowing” where the party
20 responsible for such exposure has:

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

24 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
25 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
26 12201).

27 27. Defendants have been informed of the Lead in their Products by the 60-
28 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

1 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
2 individuals to Lead without first giving clear and reasonable warnings to such individuals
3 regarding the carcinogenicity and reproductive toxicity of Lead.

4 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

5 **PRAYER FOR RELIEF**

6 Wherefore, CEH prays for judgment against Defendants as follows:

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

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

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

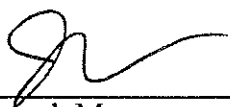
17 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
18 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

19 5. That the Court grant such other and further relief as may be just and
20 proper.

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22 Dated: January 30, 2015

Respectfully submitted,

23 LEXINGTON LAW GROUP

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26 _____
27 Joseph Mann
28 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH