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5 SUSAN DAVIA

**FILED**

NOV 30 2015

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: R. Smith, Deputy

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION

10  
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 RED STEER GLOVE COMPANY,  
ANDERSEN DRIVE BUILDING SUPPLY CO.  
15 and DOES 1-150,

16 Defendants.

Case No. CV 1504314

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the public interest of the citizens of the State of California, to enforce the People’s right to be informed of the presence of Lead and Di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals found in certain PVC rain suits and PVC product storage cases manufactured, distributed and/or otherwise sold by defendants in California.

2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . .” (*Cal. Health & Safety Code* § 25249.6.)

3. On February 27, 1987, the State listed Lead as a chemical known to cause birth defects and other reproductive harm. Lead became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on February 27, 1988. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

4. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code* § 25249.8.)

5. Lead and DEHP shall hereinafter be collectively referred to as the “LISTED CHEMICAL.”

6. Significant levels of each LISTED CHEMICAL have been discovered in or on vinyl/PVC components of rain suits and product storage cases that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of California including, but not limited to, Red Steer Glove Company PVC rain suit (#046065935055) and its respective

1 storage case. All such rain suits and storage cases comprised of vinyl/PVC materials containing  
2 the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and/or other individuals in the State of  
4 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'  
5 sale of the PRODUCTS is a violation of Proposition 65.

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
7 permanent injunctive relief to compel defendants to provide purchasers or users of the  
8 PRODUCTS with the required warning regarding the health hazards of the LISTED  
9 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

10 9. Plaintiff also seeks civil penalties against defendants for their violations of  
11 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

12 **PARTIES**

13 10. Plaintiff SUSAN DAVIA is a citizen of the State of California who is dedicated to  
14 protecting the health of California citizens through the elimination or reduction of toxic  
15 exposures from consumer products, and brings this action in the public interest pursuant to  
16 California Health & Safety Code Section 25249.7.

17 11. Based upon publicly available information, plaintiff is informed and believes, and  
18 thereupon alleges, that each defendant RED STEER GLOVE COMPANY and ANDERSEN  
19 DRIVE BUILDING SUPPLY CO. is a person doing business within the meaning of California  
20 Health & Safety Code Section 25249.11.

21 12. Based upon publicly available information, plaintiff is informed and believes, and  
22 thereupon alleges, that each defendant RED STEER GLOVE COMPANY and ANDERSEN  
23 DRIVE BUILDING SUPPLY CO. is legally responsible for the manufacture, distribution, and/or  
24 offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it  
25 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of  
26 California.

27 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
28 doing business within the meaning of California Health & Safety Code Section 25249.11.





1 uses of the PRODUCTS, without the individual purchasers and users first having been  
2 provided with a “clear and reasonable warning” regarding such toxic exposures.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
5 and plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or  
6 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code  
7 Section 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day  
8 Notice. Plaintiff further alleges and believes that such violations will continue to occur into the  
9 future.

10 29. After receipt of the claims asserted in the 60-Day Notice, the appropriate public  
11 enforcement agencies have failed to commence and diligently prosecute a cause of action  
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
14 California by DEFENDANTS, contain the LISTED CHEMICAL.

15 31. DEFENDANTS knew or should have known that the PRODUCTS contained the  
16 LISTED CHEMICAL.

17 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
18 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
19 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a  
20 consequence of the packing, shipping, unpacking, display and daily organization and  
21 movement of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

22 33. DEFENDANTS knew or should have known that the packing, shipping,  
23 unpacking, display and daily organization and movement of PRODUCTS as well as the  
24 reasonably foreseeable use of the PRODUCTS exposes individuals to the LISTED CHEMICAL  
25 through dermal contact and/or ingestion and/or inhalation.

26 34. DEFENDANTS’ participation in the manufacture, distribution and/or offer for  
27 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-  
28 accidental.



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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: November 30, 2015

Respectfully submitted,

SHEFFER LAW FIRM

By:   
Gregory M. Sheffer  
Attorneys for Plaintiff  
SUSAN DAVIA