

1 Gregory M. Sheffer, State Bar No. 173124  
2 SHEFFER LAW FIRM  
3 81 Throckmorton Ave., Suite 202  
4 Mill Valley, CA 94941  
5 Telephone: 415.388.0911  
6 Facsimile: 415.388.9911

7 Attorneys for Plaintiff  
8 SUSAN DAVIA

**FILED**

JAN 15 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF MARIN  
11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 PROTECTIVE INDUSTRIAL PRODUCTS,  
16 INC., GOLDEN STATE LUMBER and DOES  
17 1-150,

18 Defendants.

Case No. CIV 1600177

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

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

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

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

16 4. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

17 5. Significant levels of each LISTED CHEMICAL have been discovered in or on  
18 vinyl/PVC components of rain wear that defendants manufacture, distribute, and/or offer for sale  
19 to consumers throughout the State of California including, but not limited to, Falcon brand PVC  
20 Raincoats and Rainsuits. All such rain wear comprised of vinyl/PVC materials containing the  
21 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

22 6. Defendants’ failure to warn employees, consumers and/or other individuals in the  
23 State of California about their exposures to the LISTED CHEMICAL in conjunction with  
24 defendants’ sale of the PRODUCTS is a violation of Proposition 65.

25 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
26 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS  
27 and purchasers or users of the PRODUCTS with the required warning regarding the health  
28 hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)





**FIRST CAUSE OF ACTION**  
**(Violation of Proposition 65 - Against All Defendants)**

1  
2  
3       23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 22, inclusive.

5       24. In passing Proposition 65, the citizens of the State of California expressed their intent  
6 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they  
7 must be “informed about exposures to chemicals that cause cancer, birth defects, or other  
8 reproductive harm.”

9       25. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
10 and intentionally expose any individual to a chemical known to the state to cause cancer or  
11 reproductive toxicity without first giving clear and reasonable warning to such individual . . . .”  
12 Health & Safety Code § 25249.6.

13       26. On October 20, 2015, a valid and compliant Proposition 65 sixty-day notice of  
14 violation (“60-Day Notice”), together with valid, requisite Certificate of Merit, were provided to  
15 PROTECTIVE INDUSTRIAL PRODUCTS, INC., GOLDEN STATE LUMBER and various public  
16 enforcement agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and  
17 sales of the PRODUCTS, workers, purchasers and users in the State of California are being  
18 exposed to LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,  
19 without the individual workers, purchasers and users first having been provided with a “clear and  
20 reasonable warning” regarding such toxic exposures.

21       27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
22 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
23 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering  
24 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
25 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff  
26 further alleges and believes that such violations will continue to occur into the future.

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

4           29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS, contain the LISTED CHEMICAL.

6           30. DEFENDANTS knew or should have known that the PRODUCTS contained the  
7 LISTED CHEMICAL.

8           31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
9 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section  
10 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence  
11 of the packing, shipping, unpacking, display and daily organization and movement of  
12 PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

13           32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,  
14 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable  
15 use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
16 and/or ingestion and/or inhalation.

17           33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale  
18 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

19           34. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
20 employees, consumers and/or other individuals in the State of California who were or who could  
21 become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail receipt,  
22 display and organization of PRODUCTS as well as the reasonably foreseeable use of the  
23 PRODUCTS.

24           35. Contrary to the express policy and statutory prohibition of Proposition 65,  
25 employees and individuals exposed to the LISTED CHEMICAL through dermal contact and/or  
26 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold  
27 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to  
28

1 suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at  
2 law.

3 36. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to  
5 California Health & Safety Code Section 25249.7(b).

6 37. As a consequence of the above-described acts, California Health & Safety Code  
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
11 follows:

12 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),  
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),  
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
17 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
18 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the  
19 LISTED CHEMICAL;

20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: January 15, 2016

Respectfully submitted,

23 SHEFFER LAW FIRM

24  
25 By: 

Gregory M. Sheffer  
Attorneys for Plaintiff  
SUSAN DAVIA