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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

SPORTSMAN'S WAREHOUSE, INC.; and
DOES 1-150, inclusive,

Defendants.

Case No. CIV1600530

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to Di(2-
5 ethylhexyl)phthalate (“DEHP”), tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”), and tris(2-
6 chloroethyl) phosphate (“TCEP”), toxic chemicals found in vinyl/PVC safety vests, gloves with
7 vinyl/PVC components, and tent/shelter fabrics sold by defendants in California.

8 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
9 continuing failure to warn individuals not covered by California’s Occupational Safety Health
10 Act, Labor Code section 6300 et seq., who purchase, use or handle defendants’ products, about
11 the risks of exposure to DEHP, TDCPP, and TCEP present in and on vinyl/PVC safety vests,
12 gloves with vinyl/PVC components, and tent/shelter fabrics manufactured, distributed, and
13 offered for sale or use throughout the State of California. Individuals not covered by
14 California’s Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase,
15 use or handle defendants’ products are referred to hereinafter as “consumers”.

16 3. Detectable levels of DEHP are found in and on the vinyl/PVC safety vests, and
17 gloves with vinyl/PVC components, and detectable levels of TDCPP and TCEP are found in
18 and on the tent/shelter fabrics that defendants manufacture, distribute, and offer for sale without
19 a warning to consumers throughout the State of California.

20 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
22 doing business shall knowingly and intentionally expose any individual to a chemical known to
23 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
24 warning to such individual” Health & Safety Code § 25249.6.

25 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
26 chemical that is known to cause birth defects and other reproductive harm. DEHP became
27 subject to the “clear and reasonable warning” requirements of the act one year later on October
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1 24, 2004. Cal. Code Regs. tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 6. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a
4 chemical that is known to cause cancer. TDCPP became subject to the “clear and reasonable
5 warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs. tit. 27, §
6 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 7. On April 1, 1992, California listed TCEP pursuant to Proposition 65 as a chemical
8 that is known to cause cancer. TCEP became subject to the “clear and reasonable warning”
9 requirements of the act one year later on April 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);
10 Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP, TDCPP, and TCEP shall hereinafter
11 be referred to collectively as the “LISTED CHEMICALS.”

12 8. Defendants manufacture, distribute, import, sell, and offer for sale without health
13 hazard warnings in California, vinyl/PVC safety vests containing DEHP including, but not
14 limited to *Breaux Utility Hunting Accessories Vinyl Safety Vest Blaze Orange, UPC #7 35345*
15 *50145 4*.

16 9. Defendants manufacture, distribute, import, sell, and offer for sale without health
17 hazard warnings in California, gloves with vinyl/PVC components containing DEHP, including,
18 but not limited to, the *Golden Stag All Purpose Gloves, Style 813, UPC #7 63476 08133 0*.

19 10. Defendants manufacture, distribute, import, sell, and offer for sale without health
20 hazard warnings in California, tent/shelter fabrics containing TDCPP and TCEP, including, but
21 not limited to, the *Ledge Pro Series Ridge 4 Tent, UPC #0 87125 70050 3*.

22 11. All vinyl/PVC safety vests containing DEHP, gloves with vinyl/PVC components
23 containing DEHP, and tent/shelter fabrics containing TDCPP and TCEP, are referred to
24 collectively hereinafter as “PRODUCTS.”

25 12. Defendants’ failure to warn consumers in the State of California of the health
26 hazards associated with exposures to the LISTED CHEMICALS in conjunction with
27 defendants’ sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
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1 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
2 Health & Safety Code § 25249.7(a) & (b)(1).

3 13. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
5 the required warning regarding the health hazards associated with exposures to the LISTED
6 CHEMICALS. Health & Safety Code § 25249.7(a).

7 14. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
8 penalties against defendants for their violations of Proposition 65.

9 **PARTIES**

10 15. Plaintiff WHITNEY R. LEEMAN, PH.D. is a citizen of the State of California
11 who is dedicated to protecting the health of California citizens through the elimination or
12 reduction of toxic exposures from consumer products; and she brings this action in the public
13 interest pursuant to Health and Safety Code section 25249.7(d).

14 16. Defendant SPORTSMAN'S WAREHOUSE, INC. ("SPORTSMAN'S") is a
15 person in the course of doing business within the meaning of Health and Safety Code sections
16 25249.6 and 25249.11.

17 17. SPORTSMAN'S manufactures, imports, distributes, sells, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
20 State of California.

21 18. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
22 person in the course of doing business within the meaning of Health and Safety Code sections
23 25249.6 and 25249.11.

24 19. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
25 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
26 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
27 California.

1 provided with a “clear and reasonable warning” regarding the harms associated with such
2 exposures, as required by Proposition 65.

3 33. On March 23, 2016, plaintiff served a supplemental sixty-day notice of violation,
4 together with the requisite certificate of merit, on SPORTSMAN’S and certain public
5 enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS
6 containing the LISTED CHEMICALS, consumers in the State of California were being exposed
7 to the LISTED CHEMICALS resulting from their reasonably foreseeable use of the
8 PRODUCTS, without the consumers first having been provided with a “clear and reasonable
9 warning” regarding the harms associated with such exposures, as required by Proposition 65.

10 34. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
13 DEFENDANTS’ violations are ongoing and continuous in nature and, as such, will continue in
14 the future.

15 35. After receiving plaintiff’s sixty-day notice of violation and supplemental sixty-
16 day notice of violation, no public enforcement agency has commenced and diligently prosecuted
17 a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations
18 that are the subject of plaintiff’s notice of violation and supplemental notice of violation.

19 36. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to the LISTED CHEMICALS as a result of
21 the reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS
22 and endured by consumers in California are not exempt from the “clear and reasonable”
23 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

24 37. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
26 CHEMICALS.

1 38. The LISTED CHEMICALS are present in or on the PRODUCTS in such a way as
2 to expose consumers to the LISTED CHEMICALS through dermal contact and/or ingestion
3 during reasonably foreseeable use.

4 39. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, consumer exposures to the LISTED CHEMICALS, as defined by title 27 of
6 the California Code of Regulations, section 25602(b).

7 40. DEFENDANTS know that the normal and reasonably foreseeable use of the
8 PRODUCTS exposes consumers to the LISTED CHEMICALS through dermal contact and/or
9 ingestion.

10 41. DEFENDANTS intend that exposures to the LISTED CHEMICALS from the
11 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental
12 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
13 for sale or use to consumers in California.

14 42. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers in California who were or who would become exposed to the LISTED
16 CHEMICALS through dermal contact and/or ingestion resulting from their use of the
17 PRODUCTS.

18 43. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, consumers exposed to the LISTED CHEMICALS through dermal
20 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell
21 without a “clear and reasonable” health hazard warning, have suffered, and continue to suffer,
22 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

23 44. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
24 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
25 for each violation.

