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5 *Attorneys for Plaintiff, Evelyn Wimberley*

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**
11

12 **EVELYN WIMBERLEY,**)

13)
14 **Plaintiff,**)

15 **VS.**)

16 **DICK'S SPORTING GOODS, INC**)

17 **AND**)

18 **DOES 1-25 INCLUSIVE**)

19)
20 **DEFENDANTS.**)
21)

CASE NO.: 37-2018-00006053-CU-NP-NC

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

22 **NATURE OF THE ACTION**

23 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
24 in the public interest of the citizens of the State of California, to enforce the people's right to be
25 informed of the dangers from exposures to Carbon Monoxide and Soot (hereafter "Listed
26 Chemicals") toxic chemicals when using the "2 in 1 Zip Wood Firestarter" sold by
27 DEFENDANT in California.
28

1 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS' continuing failures
2 to warn California citizens about their exposure to the Listed Chemicals produced as a result of
3 combustion during the normal and intended use of the 2 in 1 Zip Wood Firestarter (UPC
4 834554006351) (hereafter "PRODUCT(S)"), that the DEFENDANTS manufactured, distributed
5 and sold, in the State of California and PRODUCTS that DEFENDANTS continue to
6 manufacture, distribute and offer for sale in the State of California.

7 3. High levels of the Listed Chemicals are common combustion byproducts produced
8 during the normal and intended use of the PRODUCT that DEFENDANTS manufacture,
9 distribute and/or offer for sale to consumers throughout the State of California.

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

15 5. California identified and listed Carbon Monoxide as a chemical known to cause
16 birth defects and other reproductive harm. Carbon Monoxide became subject to the warning
17 requirements of Proposition 65 for developmental toxicity beginning on July 1, 1989 (*27 CCR §*
18 *27002; Cal. Health & Safety Code § 25249.6.*)

19 6. California identified and listed Soot as a chemical known to cause birth defects and
20 cancer. Soot became subject to the warning requirements of Proposition 65 for developmental
21 toxicity beginning on February 27, 1987. (*27 CCR Sec. 27002; Cal. Health & Safety Code Sec.*
22 *25249.6*)

23 7. DEFENDANTS' past and continuing failures to warn consumers and/or other
24 individuals in the State of California about their exposure to the LISTED CHEMICALS in
25 conjunction with defendant's sale of the PRODUCTS is a violation of Proposition 65 and
26 subjects DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such
27 violation.

1 15. The California Superior Court has jurisdiction over DEFENDANTS based on
2 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
3 association that either are citizens of the State of California, have sufficient minimum contacts in
4 the State of California, or otherwise purposefully avail themselves of the California market.
5 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
6 courts consistent with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Proposition 65 – Against Defendant)**

9 16. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set
10 forth herein, Paragraphs 1 through 16, inclusive.

11 17. The citizens of the State of California have expressly stated in the Safe Drinking
12 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
13 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
14 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

15 18. Proposition 65 states, “No person in the course of doing business shall knowingly
16 and intentionally expose any individual to a chemical known to the state to cause cancer or
17 productive toxicity without first giving clear and reasonable warning to such individual...
18 (*Id.*)”

19 19. On May 8, 2017 a sixty-day notice violation, together with the requisite certificate
20 of merit, was provided to DEFENDANTS, and various public enforcement agencies stating that
21 as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in the State of
22 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
23 foreseeable users of the PRODUCTS, without the individual purchasers and users first having
24 been provided with a “clear and reasonable warning” regarding such toxic exposures.

25 20. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
27 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
28 violation of California Health & Safety Code § 25249.6 has continued to occur beyond

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

3 21. After receipt of the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 22. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 23. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
11 CHEMICAL.

12 24. The PRODUCTS, through normal use produces the LISTED CHEMICALS in
13 such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal
14 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

15 25. The normal and reasonably foreseeable use of the PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 27 CCR§ 25602(b).

18 26. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

20 27. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
21 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
22 accidental participation in the manufacture, distribution and/or offer for sale or use of
23 PRODUCTS to individuals in the State of California.

24 28. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and/or other individuals in the State of California who were or who could become
26 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

27 29. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
28 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the

1 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and
2 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm
3 they have no plain, speedy or adequate remedy at law.

4 30. As a consequence of the above-described acts, DEFENDANTS are liable for a
5 maximum civil penal of \$2,500 per day for each violation pursuant to California Health& Safety
6 Code § 25249.7(b).

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

10 32. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth
11 hereinafter.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

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


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

22 3. That the Court grant plaintiff his reasonable attorneys’ fees and cost of suit; and,

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

24 Respectfully Submitted,

25 Law Offices of Stephen Ure, PC.

26
27 By: 
28 Stephen Ure, Esq.
Attorney for Plaintiff
EVELYN WIMBERLEY

25 Dated: February 05, 2018