

JUL 24 2019

CLERK OF THE SUPERIOR COURT  
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**  
10 **UN-LIMITED CIVIL**

11 ALICIA CHIN,  
12 Plaintiff,  
13 vs.

14 TOWA (USA), INC.; PROTECTIVE  
15 INDUSTRIAL PRODUCTS, INC.; FULL  
16 SOURCE, LLC.; and  
17 Does 1-30, inclusive  
18 Defendants

) Case No.:

**HG19028334**

) COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

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

19 Plaintiff complains and alleges the following in the public interest of the State of California:

20 **INTRODUCTION**

21 1. This Complaint is a representative action brought by plaintiff ALICIA CHIN in the  
22 public interest of the citizens of the State of California to enforce the People's right to be  
23 informed about exposures to Di(2-ethylhexyl)phthalate ("DEHP"), a toxic chemical that is  
24 found in TOWA (USA), Inc.'s Xtra Tuff PVC gloves (Item # PIP-58-8657-S) (Xtra Tuff 58-  
25 8657) (UPC #01616314206701), sold in California.

26 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
27 California citizens about the risks of exposures to DEHP present in TOWA (USA), Inc.'s Xtra  
28 Tuff PVC gloves (Item # PIP-58-8657-S) (Xtra Tuff 58-8657) (UPC #01616314206701)

1 imported, manufactured, distributed, and offered for sale or use to consumers throughout the  
2 State of California.

3 3. Detectable levels of DEHP are commonly found in TOWA (USA), Inc.'s Xtra Tuff  
4 PVC gloves (Item # PIP-58-8657-S) (Xtra Tuff 58-8657) (UPC #01616314206701) that  
5 defendants import, manufacture, distribute, ship, sell and offer for sale to consumers  
6 throughout the State of California

7 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
8 Health & Safety Code §25249.5 et seq. (“Proposition 65”), “[n]o person in the course of doing  
9 business shall knowingly and intentionally expose any individual to a chemical known to the  
10 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning  
11 to such individual . . . .” Health & Safety Code §25249.6.

12 5. Pursuant to Proposition 65, on January 1, 1988, California identified and listed  
13 DEHP as a chemical known to cause cancer. On October 24, 2003, California identified and  
14 listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP  
15 became subject to the “clear and reasonable warning” requirements of the act one year later on.  
16 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

17 6. Defendants manufacture, distribute, import, sell, and offer for sale without warning  
18 in California, gloves containing DEHP, including, but not limited to, the Xtra Tuff PVC gloves  
19 (Item # PIP-58-8657-S) (Xtra Tuff 58-8657) (UPC #01616314206701). All such gloves  
20 containing DEHP are referred to collectively hereinafter as the (“PRODUCTS”).  
21

22 7. Defendants’ failure to warn workers, consumers and other individuals in California  
23 of the harms associated with exposures to DEHP in conjunction with defendants’ sales of the  
24 PRODUCTS containing DEHP are violations of Proposition 65, and subject defendants to  
25 enjoinderment of such conduct, as well as civil penalties for each violation. Health & Safety Code  
26 §25249.7(a) & (b)(1).  
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1 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
2 permanent injunctive relief to compel defendants to provide purchasers or users of the  
3 PRODUCTS with the required warning regarding the health hazards associated with exposures  
4 to DEHP. Health & Safety Code §25249.7(a).

5 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
6 against defendants, and each of them, for each violation of Proposition 65.

7 **PARTIES**

8 10. Plaintiff ALICIA CHIN is a citizen of the State of California who is dedicated to  
9 protecting the health of California citizens through the elimination or reduction of harmful  
10 exposures to toxic chemicals from consumer products. She brings this action in the public  
11 interest pursuant to Health & Safety Code §25249.7(d).

12 11. Defendant TOWA (USA), INC. ("TOWA") is a person in the course of doing  
13 business within the meaning of Health & Safety Code §§25249.6 & 25249.11.

14 12. TOWA manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
15 for sale or use in the State of California, or it implies by its conduct that it manufactures,  
16 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of  
17 California.

18 13. Defendant PROTECTIVE INDUSTRIAL PRODUCTS, INC. ("PIP") is a person in  
19 the course of doing business within the meaning of Health & Safety Code §§25249.6 &  
20 25249.11.

21 14. PIP manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
22 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,  
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 15. Defendant FULL SOURCE, LLC ("FULL SOURCE") is a person in the course of  
25 doing business within the meaning of Health & Safety Code §§25249.6 & 25249.11.  
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1           16. FULL SOURCE manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California

5           17. Defendants DOES 1-10 (“MANUFACTURER DEFENDANTS”) are each a  
6 person in the course of doing business within the meaning of Health & Safety Code §§25249.6  
7 & 25249.11.

8           18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
11 California.

12           19. Defendants DOES 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person  
13 in the course of doing business within the meaning of Health & Safety Code §§25249.6 and  
14 25249.11.

15           20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
16 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
17 in the State of California.

18           21. Defendants DOES 21-30 (“RETAILER DEFENDANTS”) are each a person in  
19 the course of doing business within the meaning of Health & Safety Code §§25249.6 and  
20 25249.11.

21           22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
22 State of California.

23           23. At this time, the true names of defendants DOES 1 through 30, inclusive, are  
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
25 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges,  
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1 that each of the fictitiously named defendants is responsible for the acts and occurrences  
2 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

3 24. TOWA, PIP, and FULL SOURCE, MANUFACTURER DEFENDANTS,  
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively  
5 referred to as "DEFENDANTS."

6 **VENUE AND JURISDICTION**

7 25. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure  
8 §§393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff  
9 seeks civil penalties against DEFENDANTS, because one or more instances of wrongful  
10 conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
11 conducted, and continue to conduct, business in Alameda with respect to the PRODUCTS.  
12

13 26. The California Superior Court has jurisdiction over this action pursuant to  
14 California Constitution Article VI, section 10, which grants the Superior Court "original  
15 jurisdiction in all causes except those given by statute to other trial courts." The statute under  
16 which this action is brought does not specify any other basis of subject matter jurisdiction.

17 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff's information and good faith belief that each defendant is a person, firm, corporation  
19 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
20 State of California, and/or otherwise purposefully avails itself of the California market.  
21 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
22 California courts consistent with traditional notions of fair play and substantial justice.  
23

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Proposition 65 - Against All Defendants)**

26 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
27 Paragraphs 1 through 27, inclusive.  
28

1           29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and  
2 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
4 harm.”

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

9           31. On March 16, 2019, plaintiff’s sixty-day notice of violation, together with the  
10 requisite certificate of merit, was provided to TOWA, PIP, and FULL SOURCE, and the  
11 requisite public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
12 PRODUCTS containing DEHP, workers, consumers and other individuals in the State of  
13 California are being exposed to DEHP resulting from their reasonably foreseeable use of the  
14 PRODUCTS without the individual purchasers and users first having received a “clear and  
15 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

16           32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
17 and offering of the PRODUCTS for sale or use in violation of Health & Safety Code §25249.6,  
18 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s  
19 sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous  
20 in nature, and, unless enjoined, will continue to occur in the future.

21           33. After receiving plaintiff’s sixty-day notice of violation, to plaintiff’s best  
22 information and belief, the appropriate public enforcement agencies have failed to commence  
23 and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

24           34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
25 or use in California by DEFENDANTS contain DEHP in such a way that the reasonably  
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1 foreseeable uses of these products result in exposures that require a “clear and reasonable”  
2 warning under Proposition 65.

3 35. DEFENDANTS knew or should have known that the PRODCUTS they  
4 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP.

5 36. DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
6 through dermal contact during reasonably foreseeable use.

7 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
8 continues to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of  
9 the California Code of Regulations, §25602(b).

10 38. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
11 of the PRODCUTS exposes individuals to DEHP through dermal contact.

12 39. DEFENDANTS intend for such exposures to DEHP from the reasonably  
13 foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental participation in  
14 the manufacture, distribution, sale, and offering of the PRODUCTS for sale or use to  
15 individuals in the State of California.

16 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
17 workers, consumers and other individuals in California who have been, or will be, exposed to  
18 DEHP.

19 41. Contrary to the express policy and statutory prohibition of Proposition 65  
20 enacted directly by California voters, consumers, and other individuals exposed to DEHP  
21 through dermal contact resulting from the reasonably foreseeable use of the PRODUCTS sold  
22 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
23 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

24 42. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-  
25 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for  
26 each violation.  
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1           43. As a consequence of the above-described acts, Health & Safety Code  
2 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
3 DEFENDANTS.

4                                   **PRAYER FOR RELIEF**

5           Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

6           A. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties  
7 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

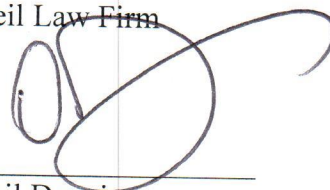
8           B. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and  
9 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the  
10 PRODUCTS for sale or use in California without first providing a “clear and reasonable  
11 warning” as defined by title 27 of the California Code of Regulations, §25601 et seq., as to the  
12 harms associated with exposures to DEHP;

13           C. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

14           D. That the Court grant such other and further relief as may be just and proper.  
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18 Date: July 15, 2019

O’Neil Law Firm



19 By: \_\_\_\_\_  
20 O’Neil Dennis  
21 Attorney for Alicia Chin  
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