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ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
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By: Cheryl Clark, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

SPEEDO INTERNATIONAL LTD., PENTLAND
BRANDS LIMITED, SPEEDO USA,
SPIRALEDGE INC.; and DOES 1 through 200,
inclusive,

Defendants.

Case No. **21CV002315**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

1 Plaintiff Center for Environmental Health, in the public interest, based on information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to n-Nitrosodiethylamine ("NDEA"), a
7 chemical known to the State of California to cause cancer. NDEA is a toxic chemical that is often
8 found in latex, including the latex used in latex swim caps. This Complaint addresses exposures
9 that have occurred, and continue to occur, through the manufacture, distribution, sale and/or use
10 of Defendants' latex swim caps (the "Products"). Individuals in California are exposed to NDEA
11 when they use the Products during swimming and other water activities.

12 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 chemicals known to the State to cause cancer, birth defects, or other reproductive harm without
15 first providing clear and reasonable warnings to exposed individuals. Defendants introduce the
16 Products containing significant quantities of NDEA into the California marketplace, thereby
17 exposing consumers of such Products to NDEA.

18 3. Defendants provide no warnings whatsoever about the carcinogenic hazards
19 associated with NDEA exposure. Defendants' conduct thus violates the warning provision of
20 Proposition 65. Health & Safety Code §25249.6.

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
23 corporation dedicated to protecting the public from environmental health hazards and toxic
24 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
25 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
26 brings this enforcement action in the public interest pursuant to Health & Safety Code
27 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
28 prosecuted a large number of Proposition 65 cases in the public interest. These cases have

1 resulted in significant public benefit, including the reformulation of millions of products to
2 remove toxic chemicals and to make them safer. CEH also provides information to Californians
3 about the health risks associated with exposure to hazardous substances, where manufacturers and
4 other responsible parties fail to do so.

5 5. Defendant SPEEDO USA is a person in the course of doing business within the
6 meaning of Health & Safety Code §25249.11. Defendant SPEEDO USA markets, distributes,
7 and/or sells Products containing NDEA for sale or use in California.

8 6. Defendant SPEEDO INTERNATIONAL LTD. is a person in the course of doing
9 business within the meaning of Health & Safety Code §25249.11. Defendant SPEEDO
10 INTERNATIONAL LTD. markets, distributes, and/or sells Products containing NDEA for sale or
11 use in California

12 7. Defendant SPIRALEDGE INC. is a person in the course of doing business within
13 the meaning of Health & Safety Code §25249.11. Defendant SPIRALEDGE INC. markets,
14 distributes, and/or sells Products containing NDEA for sale or use in California.

15 8. Defendant PENTLAND BRANDS LIMITED is a person in the course of doing
16 business within the meaning of Health & Safety Code §25249.11. Defendant PENTLAND
17 BRANDS LIMITED markets, distributes, and/or sells Products containing NDEA for sale or use
18 in California.

19 9. DOES 1 through 200 are each a person in the course of doing business within the
20 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute,
21 and/or sell Products for sale or use in California.

22 10. The true names of DOES 1 through 200 are either unknown to CEH at this time or
23 the applicable time period before which CEH may file a Proposition 65 action has not run. When
24 their identities are ascertained or the applicable time period before which CEH may file a
25 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

26 11. The defendants identified in paragraphs 5 through 8 and DOES 1 through 200 are
27 collectively referred to herein as “Defendants.”

28

1 **JURISDICTION AND VENUE**

2 12. The Court has jurisdiction over this action pursuant to Health & Safety Code
3 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
4 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
5 other trial courts.

6 13. This Court has jurisdiction over Defendants because each is a business entity that
7 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally
8 avails itself of the California market through the sale, marketing, or use of the Products in
9 California or by having such other contacts with California so as to render the exercise of
10 jurisdiction over it by the California courts consistent with traditional notions of fair play and
11 substantial justice.

12 14. Venue is proper in Alameda County Superior Court because one or more of the
13 violations arise in the County of Alameda.

14 **BACKGROUND FACTS**

15 15. The People of the State of California have declared by initiative under Proposition
16 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
17 other reproductive harm.” Proposition 65, §1(b).

18 16. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals
19 listed by the State of California as known to cause cancer, birth defects, or other reproductive
20 harm above certain levels without a “clear and reasonable warning” unless the business
21 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
22 Code §25249.6 states, in pertinent part:

23 No person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and
reasonable warning to such individual. . .

26 17. On October 1, 1987, the State of California officially listed NDEA as a chemical
27 known to cause cancer. 27 California Code of Regulations (“C.C.R.”) §27001(b). On October 1,
28 1988, one year after it was listed as a chemical known to cause cancer, NDEA became subject to

1 the clear and reasonable warning requirement regarding carcinogens under Proposition 65.
2 Health & Safety Code §25249.10(b).

3 18. Latex swim caps are popular exercise products used to cover one's hair while
4 swimming or engaging in water activities. Nitrosamines such as NDEA can form during the
5 manufacturing process of latex products, including the Products. The formation of NDEA during
6 latex processing is not necessary to the functionality of the Products, which can be made without
7 them. Yet, Defendants' products contain sufficient quantities of NDEA that such individuals are
8 exposed to NDEA through the average use of the Products. The primary route of exposure for the
9 violations is dermal exposure when consumers come into contact with the Products during use.
10 These exposures occur in swimming pools, oceans, other bodies of water and everywhere else
11 throughout California where Defendants' Products are used.

12 19. No clear and reasonable warning is provided with Defendants' Products regarding
13 the carcinogenic hazards of NDEA. The failure to provide warnings regarding the carcinogenicity
14 of NDEA in Defendants' Products is of particular concern in light of the extreme toxicity of
15 NDEA.

16 20. Any person acting in the public interest has standing to enforce violations of
17 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
18 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
19 within such time. Health & Safety Code §25249.7(d).

20 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH
21 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to
22 the District Attorneys of every county in California, to the City Attorneys of every California city
23 with a population greater than 750,000, and to each of the named Defendants. In compliance with
24 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), the Notice included the following
25 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
26 during which violations occurred; (4) specific descriptions of the violations, including (a) the
27 routes of exposure to NDEA from Defendants' latex swim caps, and (b) the specific type of
28

1 products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition
2 65-listed chemical that is the subject of the violations described in the Notice.

3 22. CEH also sent a Certificate of Merit for the Notice to the California Attorney
4 General, to the District Attorneys of every county in California, to the City Attorneys of every
5 California city with a population greater than 750,000, and to each of the named Defendants. In
6 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate
7 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and
8 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
9 exposures to NDEA alleged in the Notice; and (2) based on the information obtained through
10 such consultations, believes that there is a reasonable and meritorious case for a citizen
11 enforcement action based on the facts alleged in the Notice. In compliance with Health & Safety
12 Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General included
13 factual information – provided on a confidential basis – sufficient to establish the basis for the
14 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,
15 studies, or other data reviewed by such persons.

16 23. None of the public prosecutors with the authority to prosecute violations of
17 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants
18 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s
19 Notice regarding NDEA in the Products.

20 24. Defendants both know and intend for individuals will come into contact with the
21 Products bands during use, thus exposing such individuals to NDEA.

22 25. Defendants continue to expose consumers to NDEA without prior clear and
23 reasonable warnings regarding the carcinogenic hazards of NDEA.

24 26. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
25 filing this Complaint.

26 27. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
27 any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to violate” is
28 defined to mean “to create a condition in which there is a substantial probability that a violation

1 will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil penalties not
2 to exceed \$2,500 per day for each violation of Proposition 65.

3
4 **FIRST CAUSE OF ACTION**
(Violations of Health & Safety Code §25249.6)

5 28. CEH realleges and incorporates by reference as if specifically set forth herein
6 Paragraphs 1 through 27, inclusive.

7 29. By placing the Products into the stream of commerce, each Defendant is a person
8 in the course of doing business within the meaning of Health & Safety Code §25249.11.

9 30. NDEA is a chemical listed by the State of California as known to cause cancer.

10 31. Each Defendant knows that average use of the Products will expose users of these
11 products to NDEA. Each Defendant intends that the Products be used in a manner that results in
12 exposures to NDEA from these products.

13 32. Each Defendant has failed, and continues to fail, to provide clear and reasonable
14 warnings regarding the carcinogenicity and reproductive toxicity of NDEA to users of its
15 Products.

16 33. By committing the acts alleged above, each Defendant has at all times relevant to
17 this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to
18 NDEA without first giving clear and reasonable warnings to such individuals regarding the
19 carcinogenicity of NDEA.

20 **PRAYER FOR RELIEF**

21 CEH prays for judgment against Defendants as follows:

22 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
23 permanently enjoin Defendants from offering the Products that will be sold in California without
24 either reducing the NDEA levels in their latex swim caps such that no Proposition 65 warnings
25 are required or providing prior clear and reasonable warnings, as CEH shall specify in further
26 application to the Court;

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2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation of Proposition 65 according to proof;

3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to NDEA resulting from the use of latex swim caps sold by Defendants, as CEH shall specify in further application to the Court;

4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

Dated: November 10, 2021

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH