

1 Jeremy Fietz, State Bar No. 200396
JEREMY FIETZ, ATTORNEY AT LAW
2 1510 Fourth Street
Santa Rosa, CA 95404
3 Telephone: (707) 236-0088

4 David R. Bush, State Bar No. 154511
LAW OFFICE OF DAVID R. BUSH
5 321 South Main Street #502
Sebastopol CA 95472
6 Telephone: (707) 321-5028

7 Attorneys for Plaintiff
8 MICHAEL DIPIRRO

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
06/27/2022 at 01:18:12 PM
By: Xian-xii Bowie,
Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION
13

14 MICHAEL DIPIRRO,
15 Plaintiff,

16 v.

17
18 LIFEFITNESS, LLC; and DOES 1-150,
19 Defendants.

Case No. **22CV013418**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of Diisononyl phthalate (“DINP”), a toxic chemical, for
5 exposures created by the use of pads sold in California, including but not limited to the
6 *LifeFitness Pad, 10” x 4.5”, Black, Model/Item # 110250; OEM U-10-4.5-BLACK.*

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DINP from the use of the pads that are
9 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of
10 California without the requisite health hazard warnings.

11 3. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
12 warn California citizens about the risk of exposure to DINP in pads that are manufactured,
13 distributed, and/or offered for sale or use to consumers throughout the State of California.

14 4. Exposure to high levels of DINP are commonly produced through the normal and
15 foreseeable use of pads that defendants manufacture, distribute, and/or offer for sale to
16 consumers throughout the State of California without requisite health hazard warnings.

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

22 6. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
24 warning” requirements of the act one year later on December 20, 2014, for cancer. Cal. Code
25 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to
26 hereinafter as the “LISTED CHEMICAL.”

1 without the individual purchasers and users first having been provided with a “clear and
2 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day
6 Notices of Violation. As such, DEFENDANTS’ violations are ongoing and continuous in
7 nature, and will continue to occur in the future.

8 29. After receiving the claims asserted in the 60-day Notices of Violation, the
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a
10 cause of action against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
14 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, distribute, and offer for sale or use in California contain the LISTED
17 CHEMICAL.

18 32. The exposures to the LISTED CHEMICAL result from the normal use of the
19 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
20 foreseeable use.

21 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
22 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by California Code of Regulations title 27, section 25602(b).

24 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
25 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
28

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the State of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable
6 uses of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by
10 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
11 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

15 39. As a consequence of the above-described acts, Health and Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

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

20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
26 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

27 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: 06/27/2022

Respectfully Submitted,
LAW OFFICE OF DAVID R. BUSH

By: 

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO