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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Alameda  
**03/24/2023 at 01:03:34 PM**  
By: Xian-xii Bowie,  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,  
a non-profit corporation,

Plaintiff,

v.

LULULEMON, USA INC., and DOES 1 through  
50, inclusive,

Defendants.

Case No. **23CV029956**

**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  
2 information and belief and investigation of counsel, except for information based on knowledge,  
3 hereby makes the 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-Nitrosodimethylamine ("NDMA"), a  
7 chemical known to the State of California to cause cancer. NDMA is a toxic chemical that is  
8 often found in latex, including the latex used in latex yoga mats. This Complaint addresses  
9 exposures that have occurred, and continue to occur, through the manufacture, distribution, sale  
10 and/or use of Defendants' latex yoga mats (the "Products"). Individuals in California are exposed  
11 to NDMA when they use the Products during exercise.

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 NDMA into the California marketplace, thereby  
17 exposing consumers of such Products to NDMA.

18 3. Defendants provide no warnings whatsoever about the carcinogenic hazards  
19 associated with NDMA 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 LULULEMON USA INC. is a person in the course of doing business  
6 within the meaning of Health & Safety Code §25249.11. Defendant LULULEMON USA INC.  
7 markets, distributes, and/or sells Products containing NDMA for sale or use in California.

8 6. DOES 1 through 50 are each a person in the course of doing business within the  
9 meaning of Health & Safety Code §25249.11. DOES 1 through 50 manufacture, distribute,  
10 and/or sell Products for sale or use in California.

11 7. The true names of DOES 1 through 50 are either unknown to CEH at this time or  
12 the applicable time period before which CEH may file a Proposition 65 action has not run. When  
13 their identities are ascertained or the applicable time period before which CEH may file a  
14 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

15 8. The defendant identified in paragraph 5 and DOES 1 through 50 are collectively  
16 referred to herein as “Defendants.”

### 17 **JURISDICTION AND VENUE**

18 9. The Court has jurisdiction over this action pursuant to Health & Safety Code  
19 §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
20 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
21 other trial courts.

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

28

1 11. Venue is proper in Alameda County Superior Court because one or more of the  
2 violations arise in the County of Alameda.

3 **BACKGROUND FACTS**

4 12. The People of the State of California have declared by initiative under Proposition  
5 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
6 other reproductive harm.” Proposition 65, §1(b).

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

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

15 14. On October 1, 1987, the State of California officially listed NDMA as a chemical  
16 known to cause cancer. 27 California Code of Regulations (“C.C.R.”) §27001(b). On October 1,  
17 1988, one year after it was listed as a chemical known to cause cancer, NDMA became subject to  
18 the clear and reasonable warning requirement regarding carcinogens under Proposition 65.  
19 Health & Safety Code §25249.10(b).

20 15. Latex yoga mats are popular exercise products used to provide cushion and  
21 traction to prevent arms, hands, and legs from slipping while performing exercises. Nitrosamines  
22 such as NDMA can form during the manufacturing process of latex products, including the  
23 Products. The formation of NDMA during latex processing is not necessary to the functionality  
24 of the Products, which can be made without them. Yet, Defendants’ products contain sufficient  
25 quantities of NDMA that such individuals are exposed to NDMA through the average use of the  
26 products. The primary routes of exposure for the violations are dermal and hand to mouth  
27 exposures when consumers come into contact with the Products during exercise. These  
28

1 exposures occur in homes, gymnasiums, and everywhere else throughout California where  
2 Defendants' Products are used.

3 16. No clear and reasonable warning is provided with Defendants' Products regarding  
4 the carcinogenic hazards of NDMA. The failure to provide warnings regarding the  
5 carcinogenicity of NDMA in Defendants' Products is of particular concern in light of the extreme  
6 toxicity of NDMA.

7 17. Any person acting in the public interest has standing to enforce violations of  
8 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
9 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
10 within such time. Health & Safety Code §25249.7(d).

11 18. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
12 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to  
13 the District Attorneys of every county in California, to the City Attorneys of every California city  
14 with a population greater than 750,000, and to each of the named Defendants. In compliance with  
15 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following  
16 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
17 during which violations occurred; (4) specific descriptions of the violations, including (a) the  
18 routes of exposures to NDMA from Defendants' latex yoga mats, and (b) the specific type of  
19 products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition  
20 65-listed chemical that is the subject of the violations described in each Notice.

21 19. CEH also sent a Certificate of Merit for each Notice to the California Attorney  
22 General, to the District Attorneys of every county in California, to the City Attorneys of every  
23 California city with a population greater than 750,000, and to each of the named Defendants. In  
24 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate  
25 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and  
26 appropriate experience or expertise who reviewed facts, studies, or other data regarding the  
27 exposures to NDMA alleged in each Notice; and (2) based on the information obtained through  
28 such consultations, believes that there is a reasonable and meritorious case for a citizen

1 enforcement action based on the facts alleged in each Notice. In compliance with Health &  
2 Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General  
3 included factual information – provided on a confidential basis – sufficient to establish the basis  
4 for the Certificate, including the identity of the person(s) consulted by CEH’s counsel and the  
5 facts, studies, or other data reviewed by such persons.

6 20. None of the public prosecutors with the authority to prosecute violations of  
7 Proposition 65 has commenced or is diligently prosecuting a cause of action against Defendants  
8 under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in any of CEH’s  
9 Notices regarding NDMA in the Products.

10 21. Defendants both know and intend for individuals will come into contact with the  
11 Products during exercise, thus exposing such individuals to NDMA.

12 22. Defendants continue to expose consumers to NDMA without prior clear and  
13 reasonable warnings regarding the carcinogenic hazards of NDMA.

14 23. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
15 filing this Complaint.

16 24. Any person “violating or threatening to violate” Proposition 65 may be enjoined in  
17 any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to violate” is  
18 defined to mean “to create a condition in which there is a substantial probability that a violation  
19 will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil penalties not  
20 to exceed \$2,500 per day for each violation of Proposition 65.

21  
22 **FIRST CAUSE OF ACTION**  
**(Violations of Health & Safety Code §25249.6)**

23 25. CEH realleges and incorporates by reference as if specifically set forth herein  
24 Paragraphs 1 through 24, inclusive.

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

27 27. NDMA is a chemical listed by the State of California as known to cause cancer.  
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Dated: March 24, 2023

Respectfully submitted,

LEXINGTON LAW GROUP



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Mark N. Todzo  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH