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7 Attorneys for Plaintiff  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11 UNLIMITED CIVIL JURISDICTION

14 MICHAEL DIPIRRO,  
15 Plaintiff,

16 v.

17 LAUX SPORTING GOODS, INC.,  
18 ATHLETIC SPECIALTIES, INC.; and DOES  
1-150,

19 Defendants.

Case No. **23CV046616**

**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 chin straps for football helmets sold in California, including but  
6 not limited to the Athletic Specialties Helmet Chin Strap; Item #RCS4-YCS4.

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 PRODUCTS  
9 that are manufactured, distributed, and/or offered for sale or use to consumers throughout the  
10 State of 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 PRODUCTS that are  
13 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of  
14 California.

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

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

23 6. Pursuant to Proposition 65, on December 20, 2013, California identified and listed  
24 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable  
25 warning” requirements of the act one year later on December 20, 2014, for cancer. Cal. Code  
26 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to  
27 hereinafter as the “LISTED CHEMICAL.”  
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1 by their conduct that they manufacture, distribute, and/or offer the PRODUCTS for sale or use in  
2 the State of California.

3 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
4 person in the course of doing business within the meaning of Health and Safety Code section  
5 25249.11.

6 15. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
7 cultivate, harvest and/or manufacture, or imply by their conduct that they research, test, design,  
8 assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS  
9 offered for sale or use in the State of California.

10 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
11 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

12 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
13 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
14 in the State of California.

15 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
16 the course of doing business within the meaning of Health and Safety Code section 25249.11.

17 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 State of California.

19 20. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
22 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
23 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
24 Specifically named defendants and all “Doe” Defendants are hereinafter collectively referred to  
25 as “DEFENDANTS”.

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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
5 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
6 county with respect to the PRODUCTS.

7 22. The California Superior Court has jurisdiction over this action pursuant to  
8 California Constitution Article VI, section 10, which grants the Superior Court “original  
9 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
10 which this action is brought does not specify any other basis of subject matter jurisdiction.

11 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
13 association that is a citizen of the State of California, has sufficient minimum contacts in the  
14 State of California, and/or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

19 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
20 Paragraphs 1 through 48, inclusive.

21 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
22 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be  
23 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
24 harm.”

25 26. Proposition 65 states, “[n]o person in the course of doing business shall  
26 knowingly and intentionally expose any individual to a chemical known to the state to cause  
27  
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” Health & Safety Code § 25249.6.

3 27. On July 31, 2023, plaintiff’s 60-Day Notice of Violation, together with the  
4 requisite certificate of merit, was provided to LAUX and ATHLETIC SPECIALTIES and  
5 certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
6 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
7 California were being exposed to the LISTED CHEMICAL resulting from the reasonably  
8 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
9 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
10 required by Proposition 65.

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

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

19 30. The PRODUCTS manufactured, distributed, and offered for sale or use in  
20 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
21 allowable state limits, such that they require a “clear and reasonable” warning under Proposition  
22 65.

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

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

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

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

9           35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
10 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
11 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for  
12 sale or use to individuals in the State of California.

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

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

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

25           39. As a consequence of the above-described acts, Health and Safety Code  
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
27 DEFENDANTS.  
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1 **PRAYER FOR RELIEF**

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

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

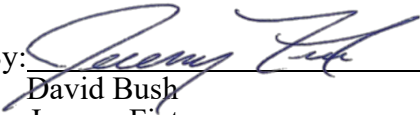
5 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
6 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
7 offering the PRODUCTS for sale or use in California without first providing a “clear and  
8 reasonable warning” as defined by California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

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

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

12 Dated: October 5, 2023

13 Respectfully Submitted,

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15 By:   
16 David Bush  
17 Jeremy Fietz  
18 Attorneys for Plaintiff  
19 MICHAEL DIPIRRO  
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