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FILED

JAN 13 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 APEX TOOL GROUP LLC, ACE
HARDWARE CORPORATION and
15 DOES 1-150,

16 Defendants.

Case No. CIV1600147 -

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of Di(2-ethylhexyl)phthalate (“DEHP”), toxic chemicals found in certain
5 crimpers with vinyl grips manufactured, distributed and/or otherwise sold by defendants in
6 California.

7 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the
9 course of doing business shall knowingly and intentionally expose any individual to a chemical
10 known to the state to cause cancer or reproductive toxicity without first giving clear and
11 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

12 3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known
13 to cause birth defects and other reproductive harm. DEHP became subject to the warning
14 requirement one year later and was therefore subject to the “clear and reasonable warning”
15 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health &*
16 *Safety Code § 25249.8.*)

17 4. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

18 5. Significant levels of each LISTED CHEMICAL have been discovered in or on
19 vinyl/PVC components of crimpers with vinyl grips that defendants manufacture, distribute,
20 and/or offer for sale to consumers throughout the State of California including, but not limited to,
21 Steel Grip Electrical Crimping Tool (#2262095). All crimpers comprised of vinyl/PVC materials
22 containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

23 6. Defendants’ failure to warn employees, consumers and/or other individuals in the
24 State of California about their exposures to the LISTED CHEMICAL in conjunction with
25 defendants’ sale of the PRODUCTS is a violation of Proposition 65.

26 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
28

1 and purchasers or users of the PRODUCTS with the required warning regarding the health
2 hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff SUSAN DAVIA is a citizen of the State of California who is dedicated to
7 protecting the health of California citizens through the elimination or reduction of toxic exposures
8 from consumer products, and brings this action in the public interest pursuant to California
9 Health & Safety Code Section 25249.7.

10 10. Based upon publicly available information, plaintiff is informed and believes, and
11 thereupon alleges, that defendants APEX TOOL GROUP LLC and ACE HARDWARE
12 CORPORATION are each a person doing business within the meaning of California Health &
13 Safety Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes, and
15 thereupon alleges, that defendants APEX TOOL GROUP LLC and ACE HARDWARE
16 CORPORATION are legally responsible for the manufacture, distribution, and/or offer of the
17 PRODUCTS for sale or use in the State of California or imply by their conduct that they
18 manufacture, distribute, and/or offer the PRODUCTS for sale or use in the State of California.

19 12. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
20 doing business within the meaning of California Health & Safety Code Section 25249.11.

21 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
22 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
23 engage in the process of research, testing, designing, assembling, fabricating, and/or
24 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

25 14. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
26 doing business within the meaning of California Health & Safety Code Section 25249.11.

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1 association that either are citizens of the State of California, have sufficient minimum contacts in
2 the State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**
6 **(Violation of Proposition 65 - Against All Defendants)**

7 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
8 Paragraphs 1 through 22, inclusive.

9 24. In passing Proposition 65, the citizens of the State of California expressed their
10 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that
11 they must be "informed about exposures to chemicals that cause cancer, birth defects, or other
12 reproductive harm."

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

17 26. On October 20, 2015, a valid and compliant Proposition 65 sixty-day notice of
18 violation ("60-Day Notice"), together with a valid requisite Certificate of Merit, was provided to
19 APEX TOOL GROUP LLC, ACE HARDWARE CORPORATION and various public enforcement
20 agencies stating that as a result of the DEFENDANTS' manufacture, distribution and sales of the
21 PRODUCTS, workers, purchasers and users in the State of California are being exposed to
22 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without
23 the individual workers, purchasers and users first having been provided with a "clear and
24 reasonable warning" regarding such toxic exposures.

25 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
27 and plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or
28 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section

1 25249.6 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice.
2 Plaintiff further alleges and believes that such violations will continue to occur into the future.

3 28. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
4 enforcement agencies have failed to commence and diligently prosecute a cause of action against
5 DEFENDANTS under Proposition 65.

6 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS, contain the LISTED CHEMICAL.

8 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
9 LISTED CHEMICAL.

10 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
11 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
12 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence
13 of the packing, shipping, unpacking, display and daily organization and movement of
14 PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

15 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
16 display and daily organization and movement of PRODUCTS as well as the reasonably
17 foreseeable use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through
18 dermal contact and/or ingestion and/or inhalation.

19 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale
20 or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

21 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 employees, consumers and/or other individuals in the State of California who were or who could
23 become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail receipt,
24 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
25 PRODUCTS.

26 35. Contrary to the express policy and statutory prohibition of Proposition 65,
27 employees and individuals exposed to the LISTED CHEMICAL through dermal contact and/or
28 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS,

1 suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at
2 law.

3 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
4 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
5 California Health & Safety Code Section 25249.7(b).

6 37. As a consequence of the above-described acts, California Health & Safety Code
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
11 follows:

12 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
17 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
18 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
19 LISTED CHEMICAL;

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

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

22 Dated: January 12, 2016

Respectfully submitted,

SHEFFER LAW FIRM

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25 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA