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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 ULINE INC. and DOES 1-150,

15 Defendants.

Case No. CIV 1604381

**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 vinyl tape and envelope products manufactured, distributed and/or otherwise sold by
6 defendants in 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 the
19 vinyl tape and envelope products that defendants manufacture, distribute, and/or offer for sale
20 to consumers throughout the State of California (including, but not limited to, ULINE Vinyl
21 Envelopes S-16492, S-6014, S-6400, S-6015, S-5653, S-6016, S-6401, S-5654, S-5655, S-6402, S-7108,
22 S-19947, S-5656, S-6403, S-6404, S-6405, S-6406, S-6407, S-6408, S-7109, S-6409, S-6410, S-6411, S-
23 6412, S-7126, S-6413, S-7110, S-12326, S14736, S-14737 and ULINE Vinyl Safety Tapes S-7193, S-
24 7189, S-7190, S-7192, S-16861, S-7191, S-16859, S-16860, S-18001, S-18002, S-11641, S-16872, S-
25 16862, S16876, S-2230, S-385, S-386, S-7194, S-9665, S-7195, S-13511, S-9732, S-18003, S-18004,
26 S2183, S-16873, S-13512, S-16877, S-3359, S-3358, S-659, S-11643, S-11644, S-9733, S-13513, S-
27 11642, S-18005, S-18008, S116445, S-16875, S-16868, S16879, S-16863, S-7204, S-3054, S-11646, S-
28 16866, S-16865, S-16867, S-16864, S-18007, S-18008, S116445, S16875, S16868, S16879, S-383, S-395,

1 S-384, S-658, S-3357, S-3565, S-12877, S16869, S-3356, S-16870, S13517). All such vinyl envelope
2 and vinyl tape products containing the LISTED CHEMICAL shall hereinafter be referred to
3 collectively as "PRODUCTS".

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

7 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
8 permanent injunctive relief to compel defendants to provide employees handling the
9 PRODUCTS and purchasers or users of the PRODUCTS with the required warning regarding
10 the health hazards of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

13 **PARTIES**

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

18 10. Based upon publicly available information, plaintiff is informed and believes, and
19 thereupon alleges, that defendant ULINE INC. is a person doing business within the meaning
20 of California Health & Safety Code Section 25249.11.

21 11. Based upon publicly available information, plaintiff is informed and believes, and
22 thereupon alleges, that defendant ULINE INC. is legally responsible for the manufacture,
23 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies
24 by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in
25 the State of California.

26 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

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

7 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
8 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
9 the State of California.

10 16. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
11 business within the meaning of California Health & Safety Code Section 25249.11.

12 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the
13 State of California.

14 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
16 Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
18 herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

19 19. ULINE INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred
21 to hereinafter as “DEFENDANTS”.

22 **VENUE AND JURISDICTION**

23 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
24 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because one or more instances of wrongful conduct occurred, and continues to occur, in the
26 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business
27 in this County with respect to the PRODUCTS.

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

5 22. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
7 association that either are citizens of the State of California, have sufficient minimum contacts in
8 the State of California, or otherwise purposefully avail themselves of the California market.
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
10 courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**
12 **(Violation of Proposition 65 - Against All Defendants)**

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

15 24. In passing Proposition 65, the citizens of the State of California expressed their
16 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that
17 they must be “informed about exposures to chemicals that cause cancer, birth defects, or other
18 reproductive harm.”

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

23 26. On October 1, 2015 and October 29, 2015, valid and compliant Proposition 65
24 sixty-day notices of violation (“60-Day Notices”), together with valid, requisite Certificates of
25 Merit, were provided to ULINE INC. and various public enforcement agencies stating that as a
26 result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, workers,
27 purchasers and users in the State of California are being exposed to LISTED CHEMICAL
28 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual

1 workers, purchasers and users first having been provided with a “clear and reasonable
2 warning” regarding such toxic exposures.

3 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
5 and plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or
6 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code
7 Section 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day
8 Notices. Plaintiff further alleges and believes that, absent permanent injunctive relief by this
9 Court, such violations will continue to occur into the future.

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

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

15 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
16 LISTED CHEMICAL.

17 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
18 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
19 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a
20 consequence of the packing, shipping, unpacking, display and daily organization and
21 movement of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

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

26 33. DEFENDANTS’ participation in the manufacture, distribution and/or offer for
27 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-
28 accidental.

1 34. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 employees, consumers and/or other individuals in the State of California who were or who
3 could become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail
4 receipt, display and organization of PRODUCTS as well as the reasonably foreseeable use of the
5 PRODUCTS.

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

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

15 37. As a consequence of the above-described acts, California Health & 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, and each of them, as
20 follows:

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


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

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 7, 2016

Respectfully submitted,
SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA