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FILED

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

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10 CIV 1604382

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 RUBIE'S COSTUME COMPANY, INC. and
DOES 1-150,

15 Defendants.

Case No. _____

**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 the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), di(isodecyl) phthalate (“DIDP”) and
5 di(isononyl)phthalate (“DINP”), toxic chemicals found in certain vinyl/PVC costume and costume
6 accessory packaging and storage cases manufactured, distributed and/or otherwise sold by
7 defendants in California.

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

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

18 4. On April 20, 2007, the State listed di-isodecyl phthalate as a chemical known to cause
19 birth defects and other reproductive harm. DIDP became subject to the warning requirement one
20 year later and was therefore subject to the “clear and reasonable warning” requirements of
21 Proposition 65, beginning on April 20, 2008. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

22 5. On December 20, 2013, the State listed diisononyl phthalate as a chemical known to
23 cause cancer. DINP became subject to the warning requirement one year later and was therefore
24 subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on
25 December 20, 2014. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

26 6. DEHP, DIDP and DINP shall hereinafter be referred to, collectively, as the “LISTED
27 CHEMICAL.”

1 7. Significant levels of one or more LISTED CHEMICAL have been discovered in or on
2 vinyl/PVC components of costume and costume accessory packaging and storage cases that
3 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
4 California including, but not limited to, child and adult costume packaging and storage cases, wig
5 packaging and storage cases and miscellaneous costume accessory packaging and storage cases.
6 All such costume and costume accessory packaging and storage cases comprised of vinyl/PVC
7 materials containing any LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

17 **PARTIES**

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

22 12. Based upon publicly available information, plaintiff is informed and believes, and
23 thereupon alleges, that defendant RUBIE'S COSTUME COMPANY, INC. is a person doing business
24 within the meaning of California Health & Safety Code Section 25249.11.

25 13. Based upon publicly available information, plaintiff is informed and believes, and
26 thereupon alleges, that defendant RUBIE'S COSTUME COMPANY, INC. is legally responsible for
27 the manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of
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1 California or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS
2 for sale or use in the State of California.

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

5 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,
6 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
7 engage in the process of research, testing, designing, assembling, fabricating, and/or
8 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

9 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing
10 business within the meaning of California Health & Safety Code Section 25249.11.

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

14 18. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
15 business within the meaning of California Health & Safety Code Section 25249.11.

16 19. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of
17 California.

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

23 21. RUBIE'S COSTUME COMPANY, INC., MANUFACTURER DEFENDANTS,
24 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
25 be referred to hereinafter as "DEFENDANTS".

26 **VENUE AND JURISDICTION**

27 22. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
28 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,

1 because one or more instances of wrongful conduct occurred, and continues to occur, in the County
2 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 County with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**
15 **(Violation of Proposition 65 - Against All Defendants)**

16 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
17 Paragraphs 1 through 24, inclusive.

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

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

26 28. On February 1, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
27 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, were provided to RUBIE’S
28 COSTUME COMPANY, INC. and various public enforcement agencies stating that as a result of

1 the DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, workers, purchasers
2 and users in the State of California are being exposed to LISTED CHEMICAL resulting from the
3 reasonably foreseeable uses of the PRODUCTS, without the individual workers, purchasers and
4 users first having been provided with a "clear and reasonable warning" regarding such toxic
5 exposures.

6 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
7 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
8 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
9 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
10 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
11 alleges and believes that such violations will continue to occur into the future.

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

15 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
16 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

17 32. DEFENDANTS knew or should have known that the PRODUCTS contained such
18 LISTED CHEMICAL.

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

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

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

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

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

12 38. 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 California
14 Health & Safety Code Section 25249.7(b).

15 39. 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), assess
22 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
23 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 offering
26 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
27 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
28 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