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8 SUSAN DAVIA

FILED

SEP 15 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 ELFA INTERNATIONAL AB, THE
16 CONTAINER STORE, INC., THE
17 CONTAINER STORE GROUP, INC. and
18 DOES 1-150

19 Defendants.

Case No. Civ 1703416

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1
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 Diisononyl phthalate (“DINP”) a toxic chemical found in certain vinyl-
5 coated utility hooks manufactured, distributed and/or otherwise sold by defendants in California.

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

11 3. On December 20, 2013, the State listed DINP as a chemical known to cause cancer.
12 DINP became subject to the warning requirement one year later and was therefore subject to the
13 “clear and reasonable warning” requirements of Proposition 65, beginning on December 20, 2014.
14 (*27 CCR § 27001(b)*; *Cal. Health & Safety Code § 25249.8*.)

15 4. DINP shall hereinafter be referred to as the “LISTED CHEMICAL.”

16 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the Elfa
17 brand utility hooks covered, in whole or in part, with vinyl, including, but not be limited to, Elfa
18 round cord hook (10047343), Elfa straight handled tool hook (10047345), Elfa wide ladder hook
19 (10047344), Elfa utility lawn equipment hook (10047346), Elfa vertical bike hook (10047347), Elfa
20 horizontal bike hook (10047349). All such Elfa hanger hook products containing the LISTED
21 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

3 **PARTIES**

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

8 10. Based upon publicly available information, plaintiff is informed and believes, and
9 thereupon alleges, that that each defendant ELFA INTERNATIONAL AB, THE CONTAINER
10 STORE, INC., THE CONTAINER STORE GROUP, INC. is a person doing business within the
11 meaning of California Health & Safety Code Section 25249.11.

12 11. Based upon publicly available information, plaintiff is informed and believes, and
13 thereupon alleges, that each defendant ELFA INTERNATIONAL AB, THE CONTAINER STORE,
14 INC., THE CONTAINER STORE GROUP, INC. is legally responsible for the manufacture,
15 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by
16 its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
17 State of California.

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

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

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

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

1 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
2 courts consistent with traditional notions of fair play and substantial justice.

3 **FIRST CAUSE OF ACTION**
4 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

15 26. On May 5, 2016, a valid and compliant Proposition 65 sixty-day notice of violation
16 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on ELFA
17 INTERNATIONAL AB, THE CONTAINER STORE, INC., THE CONTAINER STORE GROUP,
18 INC. and various public enforcement agencies stating that as a result of the DEFENDANTS'
19 manufacture, distribution and sales of the PRODUCTS, purchasers and users in the State of
20 California are being exposed to LISTED CHEMICAL resulting from the reasonably foreseeable
21 uses of the PRODUCTS, without the individual workers, purchasers and users first having been
22 provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

6 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
7 LISTED CHEMICAL.

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

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

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

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

24 35. Contrary to the express policy and statutory prohibition of Proposition 65,
25 employees and individuals exposed to the LISTED CHEMICAL through dermal contact and/or
26 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold
27 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to
28

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;

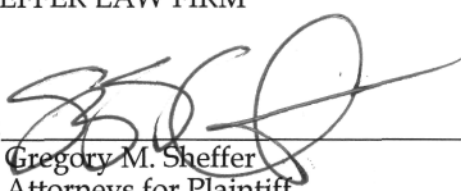
20 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

22 Dated: September 15, 2017

Respectfully submitted,

23 SHEFFER LAW FIRM

24
25 By: 
26 Gregory M. Sheffer
27 Attorneys for Plaintiff
28 SUSAN DAVIA