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FILED

FEB 21 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hernandez, 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 CENTRAL PURCHASING, LLC, HARBOR
16 FREIGHT TOOLS USA, INC. AND DOES 1-
17 150,

18 Defendants.

Case No. CIV. 1700666

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

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1 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
2 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 Health
9 & Safety Code Section 25249.7.

10 10. Based upon publicly available information, plaintiff is informed and believes, and
11 thereupon alleges, that each defendant CENTRAL PURCHASING, LLC and HARBOR FREIGHT
12 TOOLS USA, INC. is a person doing business within the meaning of California Health & Safety
13 Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes, and
15 thereupon alleges, that each defendant CENTRAL PURCHASING, LLC and HARBOR FREIGHT
16 TOOLS USA, INC. is legally responsible for the manufacture, distribution, and/or offer of the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures,
18 distributes, and/or offers 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 doing
26 business within the meaning of California Health & Safety Code Section 25249.11.

1 State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

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

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

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

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

16 26. On May 5, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
17 ("60-Day Notice") and the requisite Certificate of Merit were provided to CENTRAL
18 PURCHASING, LLC, HARBOR FREIGHT TOOLS USA, INC. and various public enforcement
19 agencies stating that as a result of the DEFENDANTS' manufacture, distribution and sales of the
20 PRODUCTS, workers, purchasers and users in the State of California are being exposed to LISTED
21 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
22 individual workers, purchasers and users first having been provided with a "clear and reasonable
23 warning" regarding such toxic exposures.

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

1 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
2 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 of
13 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
14 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 foreseeable
17 use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion and/or inhalation.

19 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or
20 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, employees
27 and individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
28 and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by

1 DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,
2 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at 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 California
5 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), assess
13 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
14 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 offering
17 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
18 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
19 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: February 20, 2017

Respectfully submitted,

23 SHEFFER LAW FIRM

24
25 By: 

26 Gregory M. Sheffer
27 Attorneys for Plaintiff
28 SUSAN DAVIA