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FILED

JUL 29 2016

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

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 LHB INDUSTRIES, INC., THE
15 LIGHTHOUSE FOR THE BLIND, INC., THE
16 CONTAINER STORE, INC., THE
CONTAINER STORE GROUP, INC. AND
DOES 1-150,

17 Defendants.

Case No.

Civ 1602737

**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 DEHP, a toxic chemicals found in certain vinyl-coated utility hooks
5 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 October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical known
12 to cause birth defects and other reproductive harm. DEHP became subject to the warning
13 requirement one year later and was therefore subject to the "clear and reasonable warning"
14 requirements of Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health &*
15 *Safety Code § 25249.8.*)

16 4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

17 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
18 Lumb-R-Grip Hanger Hooks covered, in whole or in part, with vinyl, including, but not be limited
19 to, Hanger Hook LRG-21240 (#14100304121). All such Lumb-R-Grip hanger hook products
20 containing the LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

24 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
25 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
26 and purchasers or users of the PRODUCTS with the required warning regarding the health
27 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 THE LIGHTHOUSE FOR THE BLIND, INC., LHB
10 INDUSTRIES, INC., THE CONTAINER STORE, INC. and THE CONTAINER STORE GROUP,
11 INC. is a person doing business within the meaning of California Health & Safety Code Section
12 25249.11.

13 11. Based upon publicly available information, plaintiff is informed and believes, and
14 thereupon alleges, that each defendant THE LIGHTHOUSE FOR THE BLIND, INC., LHB
15 INDUSTRIES, INC., THE CONTAINER STORE, INC. and THE CONTAINER STORE GROUP,
16 INC. is legally responsible for the manufacture, distribution, and/or offer of the PRODUCTS for
17 sale or use in the State of California or implies by its conduct that it manufactures, distributes,
18 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
26 doing business within the meaning of California Health & Safety Code Section 25249.11.

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

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

6 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State
7 of California.

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

13 19. THE LIGHTHOUSE FOR THE BLIND, INC., LHB INDUSTRIES, INC., THE
14 CONTAINER STORE, INC., THE CONTAINER STORE GROUP, INC., MANUFACTURER
15 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
16 appropriate, collectively be referred to hereinafter as "DEFENDANTS".

17 **VENUE AND JURISDICTION**

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

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

27 22. The California Superior Court has jurisdiction over DEFENDANTS based on
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

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 February 2, 2016, a valid and compliant Proposition 65 sixty-day notice of
18 violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on
19 THE CONTAINER STORE, INC., THE CONTAINER STORE GROUP, INC. and various public
20 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and
21 sales of the PRODUCTS, 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. On June 7, 2016, another valid and compliant, supplemental, 60-Day Notice,
26 together with a valid, requisite Certificate of Merit, was served on THE LIGHTHOUSE FOR THE
27 BLIND, INC., LHB INDUSTRIES, INC., THE CONTAINER STORE, INC., THE CONTAINER
28 STORE GROUP, INC., and various public enforcement agencies stating that as a result of the

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

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

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

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

16 31. DEFENDANTS knew or should have known that the PRODUCTS contained the
17 LISTED CHEMICAL.

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

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

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

1 35. 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 could
3 become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail receipt,
4 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
5 PRODUCTS.

6 36. 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, sold
9 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to
10 suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at
11 law.

12 37. 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 38. 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: July 29, 2016

Respectfully submitted,
SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA