

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 of
4 the presence of diisononyl phthalate (“DINP”) and di-isodecyl phthalate (“DIDP”), toxic chemicals
5 found in certain manual toggle clamps with vinyl coating manufactured, distributed and/or
6 otherwise sold by 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 course
9 of doing business shall knowingly and intentionally expose any individual to a chemical known to
10 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
11 to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

12 3. On December 20, 2013, the State listed DINP as a chemical known to cause cancer.
13 DINP became subject to the warning requirement on December 20, 2014. On April 20, 2007, the
14 state listed DIDP as a chemical known to cause developmental toxicity. DIDP became subject to the
15 warning requirement on April 20, 2008. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

16 4. DINP and DIDP shall collectively be referred to as “LISTED CHEMICAL.”

17 5. Significant levels of each LISTED CHEMICAL have been discovered in or on
18 vinyl/PVC grip coating of manual toggle clamps that defendants manufacture, distribute, and/or
19 offer for sale to consumers throughout the State of California including, but not limited to, DE-STA-
20 CO manual toggle clamps with vinyl-covered handles and/or tips, including, but not limited to,
21 Horizontal Hold-Down Clamps (such as Series 205/206/213/215/217/225/227/235/245/305/307/
22 309/2013/2017/2027/5305/5310), Vertical Hold-Down Clamps (such as Series 201/202/207/210/
23 229/247/267/317/518/527/528/533/535/548/578/2002/2007/2010/5105/5110/5905/5910/5915/
24 91090), Pull-Action Latch Clamps (such as Series 301/311/323/324/3051/330/331/334/341/344/
25 351/371/374/375/381/3011), Squeeze Action Clamps (such as Series 325/345/424/431/435/441/
26 462/463/482/484/486) and Straight Line Action Clamps (such as Series 601/602/603/604/
27 605/606/607/608/609/610/614/615/620/624/630/640/5130/5131/5133/5150/6004/6015). All

1 such manual toggle clamps with handle coating comprised of vinyl/PVC materials containing the
2 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

12 **PARTIES**

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

17 10. Plaintiff is informed and believes, and thereupon alleges, that defendant DESTACO,
18 A.K.A. DE-STA-CO, A DIVISION OF DOVER ENERGY, INC. ("DESTACO") is a person doing
19 business within the meaning of California Health & Safety Code Section 25249.11.

20 11. Based upon publicly available information, plaintiff is informed and believes, and
21 thereupon alleges, that defendant DESTACO is legally responsible for the manufacture,
22 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or imply by
23 their conduct that they manufacture, distribute, and/or offer the PRODUCTS for sale or use in the
24 State of California.

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

27 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
28 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

1 engage in the process of research, testing, designing, assembling, fabricating, and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

10 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of
11 California.

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

17 19. DESTACO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
18 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
19 “DEFENDANTS”.

20 **VENUE AND JURISDICTION**

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

26 21. The California Superior Court has jurisdiction over this action pursuant to California
27 Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all
28

1 causes except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**
10 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

20 26. On August 25, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
21 (“60-Day Notice”), together with a valid requisite Certificate of Merit, was provided to DESTACO,
22 other entities alleged to be in the stream of commerce and various public enforcement agencies
23 stating that as a result of the DEFENDANTS’ manufacture, distribution and sales of the
24 PRODUCTS, workers, purchasers and users in the State of California are being exposed to LISTED
25 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
26 individual workers, purchasers and users first having been provided with a “clear and reasonable
27 warning” regarding such toxic exposures.
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1 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
2 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
3 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
4 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
5 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
6 alleges and believes that such violations will continue to occur into the future.

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

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

12 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
13 LISTED CHEMICAL.

14 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
15 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
16 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
17 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
18 well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

