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SUSAN DAVIA

FILED

SEP 15 2017

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

DOWNLITE INTERNATIONAL, INC.,
MACY'S MERCHANDISING GROUP, INC.,
MACY'S WEST STORES, INC., MACY'S INC.
and DOES 1-150,

Defendants.

Case No. CIV 1703418

**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 di(2-ethylhexyl)phthalate (“DEHP”) a toxic chemical found in
5 certain vinyl/PVC packaging and storage cases for textile bedding products manufactured,
6 distributed and/or 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
9 course of doing business shall knowingly and intentionally expose any individual to a chemical
10 known to the state to cause cancer or reproductive toxicity without first giving clear and
11 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

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

17 4. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on
19 vinyl/PVC components of packaging and storage cases for textile bedding product that
20 defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of
21 California including, but not limited to, those for Hotel Collection Down Pillow (all sizes and
22 styles) and Martha Stewart Dream Comfort Comforter (all sizes and weights). All such
23 packaging and storage cases comprised of vinyl/PVC materials containing any LISTED
24 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

25 6. Defendants’ failure to warn employees, consumers and/or other individuals in the
26 State of California about their exposures to the LISTED CHEMICAL in conjunction with
27 defendants’ sale of the PRODUCTS is a violation of Proposition 65.
28

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

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

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

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

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

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

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

27 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
28 employees, consumers and/or other individuals in the State of California who were or who

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

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

10 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
11 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
12 California Health & Safety Code Section 25249.7(b).

13 37. As a consequence of the above-described acts, California Health & Safety Code
14 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
15 DEFENDANTS.

16 **PRAYER FOR RELIEF**

17 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
18 follows:

19 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
20 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
21 alleged herein;

22 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
25 warnings” as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
26 LISTED CHEMICAL;

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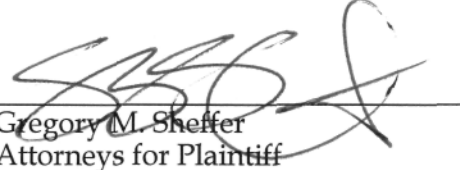
- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 15, 2017

Respectfully submitted,

SHEFFER LAW FIRM

By:


Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA