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FILED

MAY 31 2019

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Anderson, Deputy

6
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 E&E CO. LTD., JLA HOME, INC. and DOES
1-150,

15 Defendants.

Case No. CIV

1902124

**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 the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in certain vinyl/PVC
5 packaging and storage cases for textile bedding products 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 October 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to
13 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 “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 JLA Home, Inc. and E&E Co. Ltd. textile
20 bedding products that defendants manufacture, distribute, and/or offer for sale to consumers
21 throughout the State of California including, as example, but not limited to, cases for Home Design
22 Classic Mattress Pads (all sizes), Martha Stewart Easy Care Soft Fleece Blanket (all sizes and colors)
23 and Liberty Procurement 2 Piece Bed Sets, all sizes (including, but not limited to
24 16095/675716734626). All such packaging and storage cases comprised of vinyl/PVC materials
25 containing any LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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 the
3 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 Code
10 of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged.
12 When ascertained, their true names shall be reflected in an amended complaint.

13 19. E&E CO. LTD., its dba JLA HOME, INC., MANUFACTURER DEFENDANTS,
14 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
15 be referred to hereinafter as "DEFENDANTS".

16 **VENUE AND JURISDICTION**

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

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

26 22. The California Superior Court has jurisdiction over DEFENDANTS based on
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
28 association that either are citizens of the State of California, have sufficient minimum contacts in the

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 August 25, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
17 ("Notice 1"), together with a valid, requisite Certificate of Merit, were served on E&E CO. LTD.,
18 JLA HOME, INC. and various public enforcement agencies stating that as a result of the
19 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, workers, purchasers and
20 users in the State of California are being exposed to the Listed Chemical resulting from the
21 reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers and users
22 first having been provided with a "clear and reasonable warning" regarding such toxic exposures.
23 On October 11, 2016, Davia served Liberty Procurement Company, Inc., Bed Bath & Beyond, Inc.
24 and various public enforcers with a Proposition 65 60-Day Notice of Violation that provided public
25 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for
26 failing to warn consumers of the presence of, and potential exposure to, DEHP from certain
27 PRODUCTS (Notice 2). On October 10, 2017, Davia amended Notice 2 to include E&E CO. LTD.
28 and served E&E CO. LTD., Liberty Procurement Company, Inc. and Bed Bath & Beyond, Inc. with

1 that amended notice (Notice 3). On July 6, 2017, Davia served Macy's Merchandising Group, Inc.,
2 Macy's West Stores, Inc., Macy's Inc., MSLO, Inc., Sequential Brands Group and various public
3 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided public
4 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
5 25249.6 for failing to warn consumers of the presence of, and potential exposure to, DEHP from
6 certain PRODUCTS (Notice 4). E&E CO. LTD. received Notices 1 and 3, has been provided notice
7 of Notices 2 and 4 through the entities upon which each Notice 2 and Notice 4 was served. E&E
8 CO. LTD. distributed certain of the PRODUCTS that are the subject of Notices 2 and 4.

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

15 28. After receipt of the claims asserted in Notices 1 through 4, the appropriate public
16 enforcement agencies have failed to commence and diligently prosecute a cause of action against
17 DEFENDANTS under Proposition 65.

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

20 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
21 LISTED CHEMICAL.

22 31. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
23 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
24 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
25 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
26 well as the reasonably foreseeable use of the PRODUCTS.

27 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
28 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable

1 use of the PRODUCTS exposes individuals to a LISTED CHEMICAL through dermal contact
2 and/or ingestion and/or inhalation.

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

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

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

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

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

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
22 follows:

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

26 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
28 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as

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defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
CHEMICAL;

- 3. That the Court grant plaintiff her 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: May 30, 2019

Respectfully submitted,
SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA