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FILED

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, 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 WESTPOINT HOME LLC and DOES 1-150,

15 Defendants.

Case No. CIV 1802511

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”) and diisononyl phthalate (“DINP”), toxic
5 chemicals found in certain vinyl/PVC packaging and storage cases for textile bedding products
6 manufactured, 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 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.*) On December 20, 2013, the State listed diisononyl phthalate as a chemical
17 known to cause cancer. DINP became subject to the “clear and reasonable warning” requirements
18 of Proposition 65 on December 20, 2014. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

19 4. DEHP and DINP shall hereinafter, collectively, be referred to as “LISTED
20 CHEMICAL.”

21 5. Significant levels of the LISTED CHEMICAL have been discovered in or on
22 vinyl/PVC components of packaging and storage cases for WestPoint Home, LLC textile bedding
23 products that defendants manufacture, distribute, and/or offer for sale to consumers throughout
24 the State of California including, but not limited to, cases for WestPoint Home 3-piece comforter
25 sets and pillow shams in all sizes and patterns. All such packaging and storage cases comprised of
26 vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be referred to as the
27 “PRODUCTS.”
28

1 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing
2 business within the meaning of California Health & Safety Code Section 25249.11.

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

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

8 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State
9 of California.

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

15 19. WESTPOINT HOME, LLC, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
17 hereinafter as "DEFENDANTS".

18 **VENUE AND JURISDICTION**

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

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

1 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
2 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
3 alleges and believes that such violations will continue to occur into the future.

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

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

9 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
10 LISTED CHEMICAL.

11 31. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
12 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
13 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
14 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
15 well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

26 35. Contrary to the express policy and statutory prohibition of Proposition 65,
27 employees and individuals exposed to a LISTED CHEMICAL through dermal contact and/or
28 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold

1 by 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),
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged 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 her 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: July 18, 2018

Respectfully submitted,

SHEFFER LAW FIRM

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25 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA