

1 Gregory M. Sheffer, State Bar No. 173124
2 SHEFFER LAW FIRM
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911
6 Facsimile: 415.388.9911

7 Attorneys for Plaintiff
8 SUSAN DAVIA

FILED

MAY 12 2017

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

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

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 BALKAMP, INC., GENUINE PARTS
16 COMPANY and DOES 1-150,

17 Defendants.

Case No. CW 1701730

**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 of
4 the presence of diisononyl phthalate (“DINP”) and di-isodecyl phthalate (“DIDP”), toxic chemicals
5 found in certain Service Tool pliers with vinyl grips manufactured, distributed and/or otherwise
6 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 Service Tools hand tools that defendants manufacture, distribute,
19 and/or offer for sale to consumers throughout the State of California including, but not limited to,
20 Mini Combination Snap Ring Pliers (3541), Battery Nut Plier (2013). All such manual toggle clamps
21 with handle coating comprised of vinyl/PVC materials containing the LISTED CHEMICAL shall
22 hereinafter be referred to as the “PRODUCTS.”

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

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

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

5 **PARTIES**

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

10 10. Plaintiff is informed and believes, and thereupon alleges, that defendants BALKAMP,
11 INC. and GENUINE PARTS COMPANY are each a person doing business within the meaning of
12 California Health & Safety Code Section 25249.11.

13 11. Based upon publicly available information, plaintiff is informed and believes, and
14 thereupon alleges, that defendant BALKAMP, INC. and GENUINE PARTS COMPANY are legally
15 responsible for the manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the
16 State of California or imply by their conduct that they manufacture, distribute, and/or offer the
17 PRODUCTS for sale or use in the State of California.

18 12. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
19 doing business within the meaning of California Health & Safety Code Section 25249.11.

20 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
22 engage in the process of research, testing, designing, assembling, fabricating, and/or
23 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

3 17. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of
4 California.

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

10 19. BALKAMP, INC., GENUINE PARTS COMPANY, MANUFACTURER
11 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
12 appropriate, collectively be referred to hereinafter as "DEFENDANTS".

13 **VENUE AND JURISDICTION**

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

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

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

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

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

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

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

12 26. On October 11, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
13 (“60-Day Notice”), together with a valid requisite Certificate of Merit, was provided to BALKAMP,
14 INC., GENUINE PARTS COMPANY and various public enforcement agencies stating that as a
15 result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, workers,
16 purchasers and users in the State of California are being exposed to LISTED CHEMICAL resulting
17 from the reasonably foreseeable uses of the PRODUCTS, without the individual workers,
18 purchasers and users first having been provided with a “clear and reasonable warning” regarding
19 such toxic exposures.

20 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
21 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
22 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
23 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
24 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further
25 alleges and believes that such violations will continue to occur into the future.

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

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

3 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
4 LISTED CHEMICAL.

5 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
6 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
7 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
8 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
9 well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

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

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

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

4 **PRAYER FOR RELIEF**

5 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 6 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess
7 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged;
- 8 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
9 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
10 the PRODUCTS for sale or use in California, without providing warnings as defined by 27 CCR
11 Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;
- 12 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 13 4. That the Court grant such other and further relief as may be just and proper.

14 Dated: May 12, 2017

Respectfully submitted,

SHEFFER LAW FIRM

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17 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA

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