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FILED

SEP 15 2017

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 HIMATSINGKA SEIDE LIMITED,
HIMATSINGKA AMERICA, INC., DIVATEX
15 HOME FASHIONS, INC. and DOES 1-150,

16 Defendants.

Case No. CIV 1703417

**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”) and di(isononyl)phthalate
5 (“DINP”), toxic chemicals found in certain vinyl/PVC packaging and storage cases for textile
6 bedding products manufactured, distributed and/or otherwise sold by defendants in
7 California.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
9 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the
10 course of doing business shall knowingly and intentionally expose any individual to a chemical
11 known to the state to cause cancer or reproductive toxicity without first giving clear and
12 reasonable warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

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

18 4. On December 20, 2013, the State listed diisononyl phthalate as a chemical known to
19 cause cancer. DINP became subject to the warning requirement one year later and was therefore
20 subject to the “clear and reasonable warning” requirements of Proposition 65, beginning on
21 December 20, 2014. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

22 5. DEHP and DINP shall hereinafter be referred to, collectively, as the “LISTED
23 CHEMICAL.”

24 6. Significant levels of one or more LISTED CHEMICAL have been discovered in or
25 on vinyl/PVC components of packaging and storage cases for textile bedding product (such as
26 sheets, pillow cases, bed covers, comforters, quilts, throws, shams) that defendants
27 manufacture, distribute, and/or offer for sale to consumers throughout the State of California
28 including, but not limited to, those for Divatex Flannel Sheet Set, all sizes (such as #676102,

1 806222021447) and Tranquil Nights Sheet Set, all sizes (such as #1022969, 806222028903). All
2 such packaging and storage cases comprised of vinyl/PVC materials containing any LISTED
3 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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

13 **PARTIES**

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

18 11. Based upon publicly available information, plaintiff is informed and believes, and
19 thereupon alleges, that each defendant HIMATSINGKA SEIDE LIMITED, HIMATSINGKA
20 AMERICA, INC. and DIVATEX HOME FASHIONS, INC. is a person doing business within the
21 meaning of California Health & Safety Code Section 25249.11.

22 12. Based upon publicly available information, plaintiff is informed and believes, and
23 thereupon alleges, that each defendant HIMATSINGKA SEIDE LIMITED, HIMATSINGKA
24 AMERICA, INC. and DIVATEX HOME FASHIONS, INC. is legally responsible for the
25 manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of
26 California or implies by its conduct that it manufactures, distributes, and/or offers the
27 PRODUCTS for sale or use in the State of California.

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1 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business
2 in this County with respect to the PRODUCTS.

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

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

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

15 24. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 23, inclusive.

17 25. In passing Proposition 65, the citizens of the State of California expressed their
18 intent through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that
19 they must be "informed about exposures to chemicals that cause cancer, birth defects, or other
20 reproductive harm."

21 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
22 and intentionally expose any individual to a chemical known to the state to cause cancer or
23 reproductive toxicity without first giving clear and reasonable warning to such individual"
24 Health & Safety Code § 25249.6.

25 27. On October 11, 2016, a valid and compliant Proposition 65 60-Day Notice of
26 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided
27 to HIMATSINGKA SEIDE LIMITED, HIMATSINGKA AMERICA, INC., DIVATEX HOME
28 FASHIONS, INC. and various public enforcement agencies stating that as a result of the

1 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, workers, purchasers
2 and users in the State of California are being exposed to DEHP and DINP resulting from the
3 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
4 first having been provided with a "clear and reasonable warning" regarding such toxic
5 exposures.

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

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

16 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
17 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

18 31. DEFENDANTS knew or should have known that the PRODUCTS contained such
19 LISTED CHEMICAL.

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

25 33. DEFENDANTS knew or should have known that the packing, shipping,
26 unpacking, display and daily organization and movement of PRODUCTS as well as the
27 reasonably foreseeable use of the PRODUCTS exposes individuals to a LISTED CHEMICAL
28 through dermal contact and/or ingestion and/or inhalation.

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offering the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED CHEMICAL;

- 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