

FILED

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MARIN COUNTY SUPERIOR COURT
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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 ALIFE, INC., ALIFE DESIGN, THE
CONTAINER STORE, INC., THE
15 CONTAINER STORE GROUP, INC. AND
DOES 1-150,

16 Defendants.
17

Case No. CIV ^{cw} **1704288**

**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”), di(isononyl)phthalate (DINP) and
5 di(isodecyl) phthalates (DIDP), toxic chemicals found in certain Whitmor hangers with vinyl
6 coating 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 DEHP as a chemical known to cause birth defects
13 and other reproductive harm. DEHP became subject to the warning requirement one year later and
14 was therefore subject to the “clear and reasonable warning” requirements of Proposition 65,
15 beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code § 25249.8.*) On
16 December 20, 2013, the State listed DINP as a chemical known to cause cancer. DINP became
17 subject to the “clear and reasonable warning” requirements of Proposition 65 on December 20, 2014.
18 (27 CCR § 27001(c); *Cal. Health & Safety Code § 25249.8.*) On April 20, 2007, the State listed DIDP as a
19 chemical known to cause birth defects and other reproductive harm. DIDP became subject to the
20 “clear and reasonable warning” requirements of Proposition 65 on April 20, 2008. (27 CCR §
21 27001(c); *Cal. Health & Safety Code § 25249.8.*)

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

24 5. Significant levels of the LISTED CHEMICAL have been discovered in or on Happy
25 Flight vinyl travel accessories (accessory body and straps) (including, but not limited to, Happy
26 Flight Square Luggage Tag (Asstd. Colors), Happy Flight Passport Cover (Asstd. Colors), Happy
27 Flight Star Luggage Tag (Asstd. Colors), Happy Flight Eiffel Luggage Tag (Asstd. Colors), Happy
28 Flight Airplane Luggage Tag (Asstd. Colors), Happy Flight RFID Blocking Case) that defendants

1 manufacture, distribute, and/or offer for sale to consumers throughout the State of California. All
2 such identified vinyl travel accessory products containing the LISTED CHEMICAL shall hereinafter
3 be referred to as the "PRODUCTS."

4 6. 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 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
8 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
9 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
10 of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

11 8. 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 9. 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 exposures
16 from consumer products, and brings this action in the public interest pursuant to California Health
17 & Safety Code Section 25249.7.

18 10. Based upon publicly available information, plaintiff is informed and believes, and
19 thereupon alleges, that each defendant ALIFE, INC., ALIFE DESIGN, THE CONTAINER STORE,
20 INC. and THE CONTAINER STORE GROUP, INC. is a person doing business within the meaning
21 of California Health & Safety Code Section 25249.11.

22 11. Based upon publicly available information, plaintiff is informed and believes, and
23 thereupon alleges, that each defendant ALIFE, INC., ALIFE DESIGN, THE CONTAINER STORE,
24 INC. and THE CONTAINER STORE GROUP, INC. is legally responsible for the manufacture,
25 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by
26 its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the
27 State of California.

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

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

7 22. 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 the
10 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 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 22, inclusive.

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

21 25. 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 26. On June 7, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation and
26 the requisite Certificate of Merit were served on THE CONTAINER STORE, INC., THE
27 CONTAINER STORE GROUP, INC. and various public enforcement agencies stating that as a
28 result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, purchasers

1 and users in the State of California are being exposed to DINP and DIDP resulting from the
2 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
3 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

4 27. On August 25, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
5 and the requisite Certificate of Merit were served on THE CONTAINER STORE, INC., THE
6 CONTAINER STORE GROUP, INC., ALIFE DESIGN, ALIFE, INC. and various public enforcement
7 agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and sales of the
8 PRODUCTS, purchasers and users in the State of California are being exposed to DINP and DIDP
9 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
10 purchasers and users first having been provided with a “clear and reasonable warning” regarding
11 such toxic exposures.

12 28. On October 11, 2016, another valid and compliant Proposition 65 60-Day Notice of
13 Violation and the requisite Certificate of Merit were served on THE CONTAINER STORE, INC.,
14 THE CONTAINER STORE GROUP, INC., ALIFE DESIGN, ALIFE, INC. and various public
15 enforcement agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and
16 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to DEHP,
17 DINP and DIDP resulting from the reasonably foreseeable uses of the PRODUCTS, without the
18 individual purchasers and users first having been provided with a “clear and reasonable warning”
19 regarding such toxic exposures.

20 29. 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 Notices. Plaintiff
25 further alleges and believes that such violations will continue to occur into the future.

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

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

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

5 33. 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 34. 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 35. 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 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
17 employees, consumers and/or other individuals in the State of California who were or who could
18 become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail receipt,
19 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
20 PRODUCTS.

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

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

