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FILED

JAN 31 2019

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 ONTEL PRODUCTS CORPORATION, RITE
AID CORPORATION and DOES 1-150,

15 Defendants.

Case No. CV 1900431

**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 wallets
5 with vinyl components manufactured, distributed and/or otherwise sold by defendants in
6 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
9 course of doing business shall knowingly and intentionally expose any individual to a chemical
10 known to the state to cause cancer or reproductive toxicity without first giving clear and
11 reasonable warning 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 the “LISTED CHEMICAL.”

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on wallets
19 with vinyl components that defendants manufacture, distribute, and/or offer for sale to
20 consumers throughout the State of California including, but not limited to, Lock Wallet RFID
21 Blocking Wallet. All such wallets with vinyl components containing any LISTED CHEMICAL
22 shall hereinafter be referred to as the “PRODUCTS.”

23 6. Defendants’ failure to warn consumers and/or other individuals in the State of
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sale
25 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
28

1 and purchasers or users of the PRODUCTS with the required warning regarding the health
2 hazards 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. Based upon publicly available information, plaintiff is informed and believes, and
11 thereupon alleges, that each defendant ONTEL PRODUCTS CORPORATION and RITE AID
12 CORPORATION is a person doing business within the meaning of California Health & Safety
13 Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes, and
15 thereupon alleges, that each defendant ONTEL PRODUCTS CORPORATION and RITE AID
16 CORPORATION is legally responsible for the manufacture, distribution, and/or offer of the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures,
18 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

13 19. ONTEL PRODUCTS CORPORATION, RITE AID CORPORATION,
14 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS
15 shall, where appropriate, collectively 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
20 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in
21 this 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

1 the 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
10 must be "informed about exposures to chemicals that cause cancer, birth defects, or other
11 reproductive 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 February 28, 2017, a valid and compliant Proposition 65 60-Day Notice of
17 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to
18 ONTEL PRODUCTS CORPORATION, RITE AID CORPORATION and various public
19 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and
20 sales of the PRODUCTS, workers, purchasers and users in the State of California are being
21 exposed to DEHP resulting from the reasonably foreseeable uses of the PRODUCTS, without the
22 individual purchasers and users first having been provided with a "clear and reasonable warning"
23 regarding such toxic exposures. ONTEL PRODUCTS CORPORATION, on behalf of itself and
24 RITE AID CORPORATION, has tolled accrual of any limitation or other procedural compliance
25 period from the expiration of the February 28, 2017, Notice until January 7, 2019.

26 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
28 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering

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
3 further 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
14 of the packing, shipping, unpacking, display and daily organization and movement of
15 PRODUCTS as 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
2 suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at
3 law.

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

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

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
12 follows:

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

16 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
18 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
19 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the
20 LISTED CHEMICAL;

21 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

22 4. That the Court grant such other and further relief as may be just and proper.

23 Dated: January 31, 2019

Respectfully submitted,

24 SHEFFER LAW FIRM

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26 By: 
27 Gregory M. Sheffer
28 Attorneys for Plaintiff
SUSAN DAVIA