

FILED

JUL 26 2017

JAMES M. AIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

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

Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

CLAIRDECO INTERNATIONAL LIMITED,
LOWE'S COMPANIES, INC., LG
SOURCING, INC. and DOES 1-150,

Defendants.

Case No. 1600430

**FIRST AMENDED 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 Di(2-ethylhexyl)phthalate ("DEHP") and Diisononyl phthalate ("DINP"), toxic
5 chemicals found in certain vinyl-coated household utility hooks manufactured, distributed and/or
6 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 requirement
14 one year later and was therefore subject to the "clear and reasonable warning" requirements of
15 Proposition 65, beginning on October 24, 2004. (27 CCR § 27001(c); *Cal. Health & Safety Code*
16 § 25249.8.)

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

21 5. DEHP and DINP shall hereinafter be referred to, collectively, as the "LISTED
22 CHEMICAL."

23 6. Significant levels of each LISTED CHEMICAL have been discovered in or on
24 vinyl/PVC components of household utility hooks that defendants manufacture, distribute, and/or
25 offer for sale to consumers throughout the State of California including, but not limited to, Style
26 Selection Broom & Mop Holder (#0055437). All such Style Selections utility hook products
27 comprised of vinyl/PVC materials containing the LISTED CHEMICAL shall hereinafter be referred
28 to as the "PRODUCTS."

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

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

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

PARTIES

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

11. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that each defendant CLAIRDECO INTERNATIONAL LIMITED, LOWE'S COMPANIES, INC. and LG SOURCING, INC. is a person doing business within the meaning of California Health & Safety Code Section 25249.11.

12. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that each defendant CLAIRDECO INTERNATIONAL LIMITED, LOWE'S COMPANIES, INC. and LG SOURCING, INC. is legally responsible for the manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

14. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they

engage in the process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

18. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of California.

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

20. CLAIRDECO INTERNATIONAL LIMITED, LOWE'S COMPANIES, INC., LG SOURCING, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as "DEFENDANTS".

VENUE AND JURISDICTION

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

22. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all

1 causes except those given by statute to other trial courts.” The statute under which this action is
2 brought does not specify any other basis of subject matter jurisdiction.

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

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

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

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

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

21 27. On November 23, 2015, a valid and compliant Proposition 65 sixty-day notice of
22 violation (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was provided to
23 LOWE’S COMPANIES, INC., LG SOURCING, INC. and various public enforcement agencies stating
24 that as a result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS,
25 purchasers and users in the State of California are being exposed to LISTED CHEMICAL resulting
26 from the reasonably foreseeable uses of the PRODUCTS, without the individual workers, purchasers
27 and users first having been provided with a “clear and reasonable warning” regarding such toxic
28 exposures.

1 28. On February 28, 2017, a valid and compliant amended and supplemental Proposition
2 65 sixty-day notice of violation (“60-Day Notice”), together with a valid, requisite Certificate of
3 Merit, was provided to CLAIRDECO INTERNATIONAL LIMITED, LOWE’S COMPANIES, INC.,
4 LG SOURCING, INC. and various public enforcement agencies stating that as a result of the
5 DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, purchasers and users in the
6 State of California are being exposed to LISTED CHEMICAL resulting from the reasonably
7 foreseeable uses of the PRODUCTS, without the individual workers, purchasers and users first
8 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

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

20 32. DEFENDANTS knew or should have known that the PRODUCTS contained the
21 LISTED CHEMICAL.

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

27 34. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
28 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable

1 use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
2 and/or ingestion and/or inhalation.

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

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

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

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

17 39. As a consequence of the above-described acts, California Health & Safety Code
18 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
22 follows:

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

26 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
28 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as

1 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
2 CHEMICAL;

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

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

5 Dated: June 1, 2017

Respectfully submitted,

6 SHEFFER LAW FIRM

7
8 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
9 SUSAN DAVIA