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FILED

MAY 12 2017

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

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

CIV 1701729

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 WHITMOR, INC. AND DOES 1-150,

15 Defendants.

Case No. _____

**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”), toxic chemicals found in certain Whitmor
5 hangers with vinyl coating 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 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
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
19 vinyl/PVC coating or other components of Whitmor clothing and accessory hangers (including, but
20 not limited to, Deluxe 5-Tier Slack Hanger, Swing Arm Slack Hanger, Deluxe Add On Slack/Skirt
21 Hanger, Deluxe Slack Hanger, Swivel Tie Hanger, Chrome & Foam Blouse Hanger, Chrome &
22 Foam Slack Hanger, Chrome & Foam Skirt/Slack Hanger, Add-On Valet, Deluxe Add-On Skirt &
23 Blouse Hanger, 4 Tier Folding Skirt Hanger, Skirt & Slack Hanger, Suit Hanger, OTD Storage Hook,
24 10 Hook Accessory Hanger and Folding Skirt Hanger) that defendants manufacture, distribute,
25 and/or offer for sale to consumers throughout the State of California. All such identified clothing
26 and accessory hanger products containing the LISTED CHEMICAL shall hereinafter be referred to
27 as the “PRODUCTS.”
28

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

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

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

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

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

19 26. On October 11, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
20 ("60-Day Notice") and the requisite Certificate of Merit were provided to WHITMOR, INC. and
21 various public enforcement agencies stating that as a result of the DEFENDANTS' manufacture,
22 distribution and sales of the PRODUCTS, workers, purchasers and users in the State of California
23 are being exposed to LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
24 PRODUCTS, without the individual workers, purchasers and users first having been provided with
25 a "clear and reasonable warning" regarding such toxic exposures.

26 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
27 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 further
3 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 the LISTED CHEMICAL.

9 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
10 LISTED CHEMICAL.

11 31. The 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 of
14 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
15 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 the 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 or
21 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 the LISTED CHEMICAL during the reasonably foreseeable retail receipt,
25 display and organization of PRODUCTS as well as the reasonably foreseeable use of the
26 PRODUCTS.

27 35. Contrary to the express policy and statutory prohibition of Proposition 65, employees
28 and individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion

1 and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by
2 DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,
3 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at 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 California
6 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), assess
14 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
15 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 offering
18 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
19 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
20 CHEMICAL;

21 3. That the Court grant plaintiff his 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: May 11, 2017

Respectfully submitted,

24 SHEFFER LAW FIRM

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26 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA