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5 SUSAN DAVIA

**FILED**

MAY 24 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 JERGENS, INC. AND DOES 1-150,

15 Defendants.

Case No. CIV 1902031

**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”) and di(isononyl)phthalate (DINP), toxic  
5 chemicals found in certain Jergens toggle clamps with vinyl coating manufactured, distributed  
6 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 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. 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(c); Cal. Health & Safety Code § 25249.8.*)

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

23 6. Significant levels of the LISTED CHEMICAL have been discovered in or on the  
24 vinyl/PVC coating or other components of Jergens toggle clamps with vinyl grips, tips and  
25 handles, including, but not limited to 70002, 70042, 70018, 70029, that defendants manufacture,  
26 distribute, and/or offer for sale to consumers throughout the State of California. All such identified  
27 vinyl-coated toggle clamp products containing the LISTED CHEMICAL shall hereinafter be  
28 referred to as the “PRODUCTS.”

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

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

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

10 **PARTIES**

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

15 11. Based upon publicly available information, plaintiff is informed and believes, and  
16 thereupon alleges, that defendant JERGENS, INC. is a person doing business within the meaning of  
17 California Health & Safety Code Section 25249.11.

18 12. Based upon publicly available information, plaintiff is informed and believes, and  
19 thereupon alleges, that defendant JERGENS, INC. is legally responsible for the manufacture,  
20 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by  
21 its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the  
22 State of California.

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

25 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
26 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
27 engage in the process of research, testing, designing, assembling, fabricating, and/or  
28 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.





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 29. 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 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
8 California by DEFENDANTS, contain the LISTED CHEMICAL.

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

11 32. 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 33. 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 34. 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 35. 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 36. Contrary to the express policy and statutory prohibition of Proposition 65,  
28 employees and individuals exposed to the LISTED CHEMICAL through dermal contact and/or

1 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold  
2 by 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 37. 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 38. 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 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 24, 2019

Respectfully submitted,

24 SHEFFER LAW FIRM

25  
26 By:   
27 Gregory M. Sheffer  
28 Attorneys for Plaintiff  
SUSAN DAVIA