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FILED

DEC -9 2021

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY: ~~N. JOHNSON~~

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

10 SUSAN DAVIA,

11 Plaintiff,

12 v.

13 MYTAGALONGS, INC., BED BATH &
14 BEYOND INC. and DOES 1-150,

15 Defendants.
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Case No. CIV 2000229

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

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7. 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).*)

8. 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

9. 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.

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

11. Based upon publicly available information, plaintiff is informed and believes, and thereupon alleges, that defendant MYTAGALONGS, 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.

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

13. 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.

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

15. 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.

16. Defendant BED BATH & BEYOND INC. and DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

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

18. 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.

19. MYTAGALONGS, INC., BED BATH & BEYOND INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as “DEFENDANTS”.

VENUE AND JURISDICTION

20. 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.

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

22. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

1 association that either are citizens of the State of California, have sufficient minimum contacts in the
2 State of California, or otherwise purposefully avail themselves of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**
6 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

17 26. On December 6, 2018, a valid and compliant Proposition 65 60-Day Notice of
18 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to
19 MYTAGALONGS, INC. and BED BATH & BEYOND INC. and various public enforcement
20 agencies stating that as a result of the DEFENDANTS' manufacture, distribution and sales of
21 luggage tag PRODUCTS, workers, purchasers and users in the State of California are being exposed
22 to the DEHP and DINP resulting from the reasonably foreseeable uses of certain of the PRODUCTS,
23 without the individual purchasers and users first having been provided with a "clear and
24 reasonable warning" regarding such toxic exposures.

25 27. On March 27, 2019, a valid and compliant Supplemental Proposition 65 60-Day
26 Notice of Violation ("60-Day Notice"), together with another valid, requisite Certificate of Merit,
27 were provided to MYTAGALONGS, INC. and BED BATH & BEYOND INC. and various public
28 enforcement agencies stating that as a result of the DEFENDANTS' manufacture, distribution and

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

5 28. On April 16, 2021, a valid and compliant Second Supplemental Proposition 65 60-
6 Day Notice of Violation ("60-Day Notice"), together with another valid, requisite Certificate of
7 Merit, were provided to MYTAGALONGS, INC. and various public enforcement agencies stating
8 that as a result of the MYTAGALONG'S manufacture, distribution and sales of the PRODUCTS,
9 workers, purchasers and users in the State of California are being exposed to DEHP resulting from
10 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
11 first having been provided with a "clear and reasonable warning" regarding such toxic exposures.

12 29. On January 15, 2019, counsel for defendant BED BATH & BEYOND INC. executed a
13 Tolling Agreement tolling the accrual of any and all limitations periods relating to the 60-Day
14 Notices and this claim as of February 1, 2019. On January 16, 2019, counsel for defendant
15 MYTAGALONGS, INC. also executed a Tolling Agreement tolling the accrual of any and all
16 limitations periods relating to the 60-Day Notices and this claim as of February 1, 2019.

17 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
18 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
19 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
20 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
21 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
22 alleges and believes that such violations will continue to occur into the future.

23 31. After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day
24 Notice, the appropriate public enforcement agencies have failed to commence and diligently
25 prosecute a cause of action against DEFENDANTS under Proposition 65.

26 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
27 California by DEFENDANTS, contain one or more LISTED CHEMICAL.
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1 33. DEFENDANTS knew or should have known that the PRODUCTS contained such
2 LISTED CHEMICAL.

3 34. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
4 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
5 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
6 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
7 well as the reasonably foreseeable use of the PRODUCTS.

8 35. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
9 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
10 use of the PRODUCTS exposes individuals to a LISTED CHEMICAL through dermal contact
11 and/or ingestion and/or inhalation.

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

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

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

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

26 40. As a consequence of the above-described acts, California Health & Safety Code
27 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
28 DEFENDANTS.

1 PRAYER FOR RELIEF

2 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
3 follows:

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

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

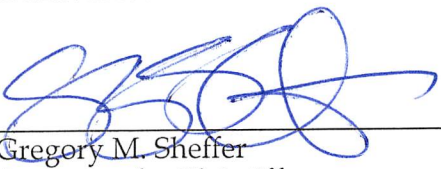
12 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

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

14 Dated: December 8, 2021

Respectfully submitted,

15 SHEFFER LAW FIRM

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17 By: 
18 Gregory M. Sheffer
19 Attorneys for Plaintiff
20 SUSAN DAVIA
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