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FILED

APR 29 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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

SUSAN DAVIA,

Plaintiff,

v.

WIRE AND CABLE SPECIALTIES, INC.,
BEADALON, THE MICHAELS COMPANIES,
INC., MICHAELS STORES, INC. AND
MICHAELS STORES PROCUREMENT
COMPANY, INC. and DOES 1-150,

Defendants.

Case No. CIV2003583

**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 First Amended Complaint is a representative action brought by plaintiff
3 SUSAN DAVIA, in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical found in the grips of Beadalon plier products manufactured, distributed and/or otherwise
6 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. DEHP shall hereinafter be referred to as “LISTED CHEMICAL.”

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
19 vinyl/PVC grip covering components of Beadalon or Artistic Wire plier products that defendants
20 design, manufacture, distribute, and/or offer for sale to consumers throughout the State of
21 California including, *as example only*, but not limited to, Beadalon flat/round nylon jaw plier
22 (035926102774), Beadalon slim round nose plier (035926114043), Beadalon slim bent chain nose plier
23 (035926114036), Beadalon Slim Semi-Flush Plier (035926114050), Artistic Wire 5 Piece Shimmer Tool
24 Kit (035926136533). All such Beadalon and Artistic Wire plier products including vinyl/PVC
25 components containing any LISTED CHEMICAL shall hereinafter be referred to as the
26 “PRODUCTS.”
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1 consumers located in the State of California and has covered, obscured or altered a warning label
2 that has been affixed to the products in the distribution process and/or has received notice and
3 warning information regarding the alleged phthalate exposure from the products and has
4 continued to sell the products without conspicuously posting or displaying any compliant
5 Proposition 65 warning.

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

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

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

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

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

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

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

26 20. WIRE AND CABLE SPECIALTIES, INC., BEADALON, THE MICHAELS
27 COMPANIES, INC., MICHAELS STORES, INC., MICHAELS STORES PROCUREMENT
28 COMPANY, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and

1 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
2 "DEFENDANTS".

3 VENUE AND JURISDICTION

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

9 22. The California Superior Court has jurisdiction over this action pursuant to California
10 Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all
11 causes except those given by statute to other trial courts." The statute under which this action is
12 brought does not specify any other basis of subject matter jurisdiction.

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

19 FIRST CAUSE OF ACTION
20 (Violation of Proposition 65 - Against All Defendants)

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

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

27 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
28 and intentionally expose any individual to a chemical known to the state to cause cancer or

1 reproductive toxicity without first giving clear and reasonable warning to such individual”
2 Health & Safety Code § 25249.6.

3 27. On February 6, 2020, a valid and compliant Proposition 65 60-Day Notice of
4 Violation (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was served on
5 WIRE AND CABLE SPECIALTIES, INC. and BEADALON and various public enforcement
6 agencies stating that as a result of the DEFENDANTS’ manufacture, distribution and sales of the
7 PRODUCTS, purchasers and users in the State of California are being exposed to the Listed
8 Chemical resulting from the reasonably foreseeable uses of certain PRODUCTS, without the
9 individual purchasers and users first having been provided with a “clear and reasonable warning”
10 regarding such toxic exposures.

11 28. On December 10, 2020, a valid and compliant Proposition 65 60-Day Notice of
12 Violation (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was served on
13 defendant THE MICHAELS COMPANIES, INC., MICHAELS STORES, INC., MICHAELS STORES
14 PROCUREMENT COMPANY, INC. and various public enforcement agencies stating that as a
15 result of the DEFENDANTS’ distribution and sales of the PRODUCTS, purchasers and users in the
16 State of California are being exposed to the Listed Chemical resulting from the reasonably
17 foreseeable uses of certain PRODUCTS, without the individual purchasers and users first having
18 been provided with a “clear and reasonable warning” regarding such toxic exposures.

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

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

1 31. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

3 32. DEFENDANTS knew or should have known that the PRODUCTS contained such
4 LISTED CHEMICAL.

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

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

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

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

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

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

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