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FILED

NOV 10 2021

JAMES M. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT
BY: **N. JOHNSON**

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

SUSAN DAVIA,

Plaintiff,

v.

NOVELTIES & BEYOND, INC.,
MCCAULOU'S, INC. and DOES 1-150,

Defendants.

Case No. CIV **2103856**

**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”), a toxic chemical found in certain Sage & Emily
5 bath and body organizer products manufactured, distributed and/or otherwise sold by defendants
6 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. 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 components of Sage & Emily bath and body organizer products that defendants design,
20 manufacture, distribute, and/or offer for sale to consumers throughout the State of California
21 including, as example, but not limited to, Chrysanthemum, Blu Tie Dye, B&W Lattice, Daisy,
22 Geometric, Gypsy and all other patterns. All such Sage & Emily bath and body organizer products
23 including vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be referred to
24 as the “PRODUCTS.”

25 6. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sale of
27 the PRODUCTS is a violation of Proposition 65.

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

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

7 **PARTIES**

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

12 10. Based upon publicly available information, plaintiff is informed and believes, and
13 thereupon alleges, that each defendant NOVELTIES & BEYOND, INC. and MCCAULOU'S,
14 INC. is a person doing business within the meaning of California Health & Safety Code Section
15 25249.11.

16 11. Based upon publicly available information, plaintiff is informed and believes, and
17 thereupon alleges, that each defendant NOVELTIES & BEYOND, INC. and MCCAULOU'S,
18 INC. is legally responsible for the design, manufacture, distribution, and/or offer of the
19 PRODUCTS for sale or use in the State of California or implies by its conduct that it designs,
20 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

1 State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

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

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

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

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

16 26. On March 19, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
17 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on NOVELTIES
18 & BEYOND, INC., MCCAULOU'S, INC. and various public enforcement agencies stating that as
19 a result of the DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, purchasers
20 and users in the State of California are being exposed to the Listed Chemical resulting from the
21 reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers and users first
22 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

4 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
5 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

6 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
7 LISTED CHEMICAL.

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

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

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

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

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

28

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

4 37. As a consequence of the above-described acts, California Health & Safety Code
5 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
6 DEFENDANTS.

7 38. In addition to the commission of all acts and actions identified hereinabove,
8 defendants NOVELTIES & BEYOND, INC. and MCCAULOU'S, INC. further violated 27 C.C.R.
9 25600.2(g), by failing to promptly provide the name and contact information for the manufacturer,
10 producer, packager, importer, supplier, and distributor of the product to plaintiff as demanded in her
11 60-Day Notice to them.

12 **PRAYER FOR RELIEF**

13 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
14 follows:

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

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

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

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

25 Dated: November 10, 2021

SHEFFER LAW FIRM

26 

27 Gregory M. Sheffer
28 Attorneys for Plaintiff SUSAN DAVIA