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FILED

MAR 16 2022

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.

RIO GRANDE, INC., RICHLINE GROUP, INC.
AND DOES 1-150,

Defendants.

Case No. CIV 2200689

**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
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of lead. Lead compounds and di(2-ethylhexyl)phthalate (DEHP), toxic
5 chemicals found in certain plier products with vinyl grips and brass craft tools, distributed and/or
6 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
9 course of doing business shall knowingly and intentionally expose any individual to a chemical
10 known to the state to cause cancer or reproductive toxicity without first giving clear and
11 reasonable warning 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.*) On February 27, 1987, the State of California identified and listed Lead as a chemical
17 known to cause birth defects and other reproductive harm. Lead became subject to the warning
18 requirement one year later and was subject to the “clear and reasonable warning” requirements of
19 Proposition 65 on February 27, 1988. (*27 CCR § 27001 (c); Cal. Health & Safety Code § 25249.8.*)

20 4. Where appropriate, Lead and DEHP shall hereinafter be collectively referred to as
21 “LISTED CHEMICAL.”

22 5. Significant levels of DEHP have been discovered in or on the vinyl/PVC grip
23 components of plier products that defendants design, manufacture, distribute, and/or offer for
24 sale to consumers throughout the State of California including, as example, but not limited to, Flat
25 Nose Plier (111070), RG German Rosary Plier (111171), RG German Stone Setting Plier
26 (111176), German XL Flat Nose Plier (111188), Slim Nylon Flat Nose (111824), Slimline Round
27 Nose Plier (111902) and all other patterns sizes and colors. All such plier products including
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1 vinyl/PVC grips containing any DEHP shall hereinafter be referred to as the "DEHP
2 PRODUCTS."

3 6. Significant levels of Lead have been discovered in or on the brass components of
4 brass craft tool products that defendants design, manufacture, distribute, and/or offer for sale to
5 consumers throughout the State of California including, as example, but not limited to, Brass Pin
6 Vise (113190). All such brass craft tool products containing any Lead shall hereinafter be referred
7 to as the "Lead PRODUCTS."

8 7. DEHP PRODUCTS and Lead Products shall hereafter be collectively referred to as
9 "PRODUCTS"

10 8. Defendants' failure to warn consumers and/or other individuals in the State of
11 California about their exposures to the LISTED CHEMICAL in conjunction with defendants' sale
12 of the PRODUCTS is a violation of Proposition 65.

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

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

19 **PARTIES**

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

24 12. Based upon publicly available information, plaintiff is informed and believes, and
25 thereupon alleges, that each defendant RIO GRANDE, INC. and RICHLINE GROUP, INC. is a
26 person doing business within the meaning of California Health & Safety Code Section 25249.11.

27 13. Based upon publicly available information, plaintiff is informed and believes, and
28 thereupon alleges, that each defendant RIO GRANDE, INC. and RICHLINE GROUP, INC. is

1 legally responsible for the design, manufacture, distribution, and/or offer of the PRODUCTS for
2 sale or use in the State of California or implies by its conduct that it designs, manufactures,
3 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

24 21. RIO GRANDE, INC., RICHLINE GROUP, INC., MANUFACTURER
25 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where
26 appropriate, collectively be referred to hereinafter as "DEFENDANTS".
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1 VENUE AND JURISDICTION

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

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

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

17 FIRST CAUSE OF ACTION
18 (Violation of Proposition 65 - Against All Defendants)

19 25. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 24, inclusive.

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

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

1 28. On April 16, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
2 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was served on RIO
3 GRANDE, INC., RICHLINE GROUP, INC. and various public enforcement agencies stating that as
4 a result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, purchasers
5 and users in the State of California are being exposed to a LISTED CHEMICAL resulting from the
6 reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers and users
7 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

8 29. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
9 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
10 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering
11 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
12 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff
13 further alleges and believes that such violations will continue to occur into the future.

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

17 31. Each of the PRODUCTS manufactured, distributed, and/or offered for sale or use
18 in California by DEFENDANTS, contain one or more LISTED CHEMICAL.

19 32. DEFENDANTS knew or should have known that the PRODUCTS contained such
20 LISTED CHEMICAL.

21 33. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
22 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
23 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence
24 of the packing, shipping, unpacking, display and daily organization and movement of
25 PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

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

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

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

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

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

18 39. As a consequence of the above-described acts, California Health & Safety Code
19 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
20 DEFENDANTS.

21 40. In addition to the commission of all acts and actions identified hereinabove,
22 defendants RIO GRANDE, INC. and RICHLINE GROUP, INC. further violated 27 C.C.R. 25600.2(g),
23 by failing to promptly provide the name and contact information for the manufacturer, producer,
24 packager, importer, supplier, and distributor of the PRODUCTS to plaintiff as demanded in her 60-
25 Day Notice and subsequent correspondence to them and their counsel.

26 **PRAYER FOR RELIEF**

27 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
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1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged herein;


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

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

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

Dated: March 16, 2022

Respectfully submitted,
SHEFFER LAW FIRM

By: 
Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA