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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.

TRESKA, INC., MCCAULOU'S, INC. and
DOES 1-150,

Defendants.

Case No. CIV 2103857

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

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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 diisononyl phthalate ("DINP"), a toxic chemical found in certain Sage & Emily bath
5 and body organizer products manufactured, distributed and/or otherwise sold by defendants in
6 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 December 20, 2013, the State listed DINP as a chemical known to cause cancer.
13 DINP became subject to the warning requirement one year later and was therefore subject to the
14 "clear and reasonable warning" requirements of Proposition 65, beginning on December 20, 2014.
15 (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

16 4. DINP shall hereinafter be referred to as "LISTED CHEMICAL."

17 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
18 vinyl/PVC components of Treska vinyl accessory bag products that defendants design,
19 manufacture, distribute, and/or offer for sale to consumers throughout the State of California
20 including, as example, but not limited to, Treska vinyl accessory bag TVSH0073 and all other
21 patterns. All such Treska vinyl accessory bag products containing any LISTED CHEMICAL shall
22 hereinafter be referred to as the "PRODUCTS."

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

26 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
28

1 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
2 of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

5 PARTIES

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

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

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

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

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

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

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

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

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

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

10 19. TRESKA, INC., MCCAULOU'S, INC., MANUFACTURER DEFENDANTS,
11 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
12 be referred to hereinafter as "DEFENDANTS".

13 VENUE AND JURISDICTION

14 20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
15 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
16 because one or more instances of wrongful conduct occurred, and continues to occur, in the County
17 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this
18 County with respect to the PRODUCTS.

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

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

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

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

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

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

13 26. On May 27, 2021, a valid and compliant Proposition 65 60-Day Notice of Violation
14 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, was served on TRESKA,
15 INC., MCCAULOU'S, INC. and various public enforcement agencies stating that as a result of the
16 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, purchasers and users in the
17 State of California are being exposed to the Listed Chemical resulting from the reasonably
18 foreseeable uses of certain PRODUCTS, without the individual purchasers and users first having
19 been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

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

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

10 32. 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 and/or
13 ingestion and/or inhalation.

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

16 34. 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 35. Contrary to the express policy and statutory prohibition of Proposition 65, employees
21 and individuals exposed to a LISTED CHEMICAL through dermal contact and/or ingestion and/or
22 inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
23 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable harm,
24 for which harm they have no other plain, speedy or adequate remedy at law.

25 36. 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).
28

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

4 38. In addition to the commission of all acts and actions identified hereinabove,
5 defendants TRESKA, INC. and MCCAULOUS, INC. further violated 27 C.C.R. 25600.2(g), by
6 failing to promptly provide the name and contact information for the manufacturer, producer,
7 packager, importer, supplier, and distributor of the product to plaintiff as demanded in her 60-Day
8 Notice to them.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
11 follows:

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

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

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

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

22 Dated: November 10, 2021

SHEFFER LAW FIRM



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24 Gregory M. Sheffer
25 Attorneys for Plaintiff SUSAN DAVIA
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