

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
Telephone: 415.388.0911

Attorneys for Plaintiff
SUSAN DAVIA

FILED

AUG 17 2022

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.

GREAT NUMBER ONE, LLC, IT'SUGAR, LLC
and DOES 1-150,

Defendants.

Case No. CIV **2202590**
**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 diisononyl phthalate (“DINP”), a toxic chemical found in certain novelty pillow
5 products with vinyl pouch windows manufactured, distributed and/or otherwise sold by
6 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 December 20, 2013, the State listed DINP as a chemical known to cause cancer.
13 DINP became subject to the statutory “clear and reasonable” warning requirement on December 20,
14 2014. (*27 CCR § 27001(c); Cal. Health & Safety Code § 25249.8.*)

15 4. DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

16 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
17 vinyl/PVC pouch windows of novelty pillow products that defendants design, manufacture,
18 distribute, and/or offer for sale to consumers throughout the State of California including, as
19 example, but not limited to, Nerds Package Pillow (Strawberry 7 Lime, 8 10037 82184 0, ITS10741).
20 All such novelty pillow products including vinyl/PVC materials containing any LISTED
21 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

3 **PARTIES**

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

8 10. Based upon publicly available information, plaintiff is informed and believes, and
9 thereupon alleges, that each defendant GREAT NUMBER ONE, LLC and IT'SUGAR, LLC is a
10 person doing business within the meaning of California Health & Safety Code Section 25249.11.

11 11. Based upon publicly available information, plaintiff is informed and believes, and
12 thereupon alleges, that each defendant GREAT NUMBER ONE, LLC and IT'SUGAR, LLC is legally
13 responsible for the design, manufacture, distribution, and/or offer of the PRODUCTS for sale or use
14 in the State of California or implies by its conduct that it designs, manufactures, distributes, and/or
15 offers the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

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

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

8 19. GREAT NUMBER ONE, LLC, IT'SUGAR, LLC, MANUFACTURER DEFENDANTS,
9 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively
10 be referred to hereinafter as "DEFENDANTS".

11 **VENUE AND JURISDICTION**

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

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

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

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

1
2
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 16, 2022, 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 GREAT
15 NUMBER ONE, LLC, IT’SUGAR, LLC and various public enforcement agencies stating that as a
16 result of the DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, purchasers and
17 users in the State of California are being exposed to the LISTED CHEMICAL resulting from the
18 reasonably foreseeable uses of certain PRODUCTS, without the individual purchasers and users first
19 having 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. Each of the RETAIL DEFENDANTS has actual knowledge of the potential consumer
15 product exposures to the LISTED CHEMICAL both pursuant to information obtained by them from
16 reliable sources in the course of doing business and pursuant to the 60-Day Notice.

17 34. No manufacturer, producer, packager, importer, supplier, or distributor of the
18 PRODUCTS sold by RETAIL DEFENDANTS has designated an agent for service of process in
19 California or has a place of business in California.

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

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

26 37. Contrary to the express policy and statutory prohibition of Proposition 65, employees
27 and individuals exposed to a LISTED CHEMICAL through dermal contact and/or ingestion and/or
28 inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS

1 without a “clear and reasonable warning”, have suffered, and continue to suffer, irreparable harm,
2 for which harm they have no other plain, speedy or adequate remedy at law.

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

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

9 40. In addition to the commission of all acts and actions identified hereinabove,
10 defendant GREAT NUMBER ONE, LLC further violated 27 C.C.R. 25600.2(g), by failing to promptly
11 provide the name and contact information for the manufacturer, producer, packager, importer,
12 supplier, and distributor of the product to plaintiff as demanded in her 60-Day Notice to them.

13 **PRAYER FOR RELIEF**

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

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

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: August 17, 2022

SHEFFER LAW FIRM

26 

27 Gregory M. Sheffer
28 Attorneys for Plaintiff SUSAN DAVIA