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FILED

JAN 29 2024

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

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
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12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 ROYAL CREST HOME PRODUCTS CORP.,
16 BETTER HOME PLASTICS CORP., RITE AID
CORPORATION and DOES 1-150,

17 Defendants.
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Case No. **CV 0001931**

**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 vinyl shower
5 curtain and vinyl shower curtain liner products 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 vinyl
17 shower curtain and shower curtain liner products that defendants design, manufacture, distribute,
18 and/or offer for sale to consumers throughout the State of California including, as example, but not
19 limited to, Royal Crest Super Clear Shower Curtain and Shower Curtain Liner, 100% Vinyl, Extra
20 Thick & Durable (70” x 72”) (including 7 48209 01005 4 and 7 48209 09604 1). All such vinyl shower
21 curtain and liner products containing any LISTED CHEMICAL shall hereinafter be referred to as the
22 “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
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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 ROYAL CREST HOME PRODUCTS CORP., BETTER HOME
12 PLASTICS CORP. and RITE AID CORPORATION is a person doing business within the meaning of
13 California Health & Safety Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes, and
15 thereupon alleges, that each defendant ROYAL CREST HOME PRODUCTS CORP., BETTER HOME
16 PLASTICS CORP. and RITE AID CORPORATION is legally responsible for the design, manufacture,
17 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by its
18 conduct that it designs, manufactures, distributes, and/or offers the PRODUCTS for sale or use in
19 the State of California.

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

22 13. MANUFACTURER DEFENDANTS, ROYAL CREST HOME PRODUCTS CORP. and
23 BETTER HOME PLASTICS CORP. engage in the process of research, testing, designing, assembling,
24 fabricating and/or manufacturing, or imply by their conduct that they engage in the process of
25 research, testing, designing, assembling, fabricating, and/or manufacturing, one or more of the
26 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 15. DISTRIBUTOR DEFENDANTS, ROYAL CREST HOME PRODUCTS CORP. and
2 BETTER HOME PLASTICS CORP. distribute, exchange, transfer, process and/or transport one or
3 more of the PRODUCTS to individuals, businesses or retailers for sale or use in the State of
4 California.

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

7 17. RETAIL DEFENDANTS and RITE AID CORPORATION offer the PRODUCTS for
8 sale to individuals in the State of California.

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

14 19. ROYAL CREST HOME PRODUCTS CORP., BETTER HOME PLASTICS CORP.,
15 RITE AID CORPORATION, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
16 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
17 "DEFENDANTS".

18 **VENUE AND JURISDICTION**

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

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

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

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

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

10 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
11 LISTED CHEMICAL.

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

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

21 33. Each of the RETAIL DEFENDANTS has actual knowledge of the potential consumer
22 product exposures to the LISTED CHEMICAL both pursuant to information obtained by them from
23 reliable sources in the course of doing business and pursuant to the 60-Day Notice.

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

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

1 manufacturing, distributing, or offering the PRODUCTS for sale or use in California, without
2 providing "clear and reasonable warnings" as defined by 27 CCR Section 25601, as to the harms
3 associated with exposures to the LISTED CHEMICAL;

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

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

6 Wherefore, plaintiff prays for judgment against RITE AID CORPORATION as follows:

7 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess
8 civil penalties against RITE AID CORPORATION in the amount of \$2,500 per day for each alleged
9 violation occurring only after October 15, 2023;

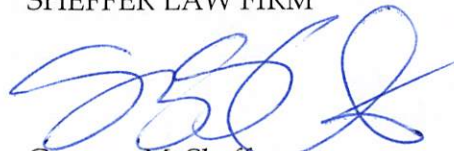
10 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a) and
11 based on RITE AID CORPORATIONS' conduct subsequent to October 15, 2023, preliminarily and
12 permanently enjoin RITE AID CORPORATION from manufacturing, distributing, or offering the
13 PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
14 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
15 CHEMICAL;

16 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit accrued
17 in relation solely to RITE AIC CORPORATIONS conduct after October 15, 2023; and

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

19 Dated: January 29, 2024

SHEFFER LAW FIRM



Gregory M. Sheffer
Attorneys for Plaintiff SUSAN DAVIA