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SUSAN DAVIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

ORANGE CIRCLE STUDIO CORPORATION,
ORANGE CIRCLE STUDIO, LLC,
NORDSTROM, INC. and DOES 1-150,

Defendants.

Case No. CV **CV0004481**

**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 Studio OH!
5 brand Lip Balm & Hand Lotion Set products manufactured, distributed and/or 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 "clear and reasonable
14 warning" requirements of Proposition 65, one year later, beginning on October 24, 2004. (27 CCR §
15 27001(c); *Cal. Health & Safety Code* § 25249.8.)

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

17 5. Significant levels of the LISTED CHEMICAL have been discovered in or on the
18 Studio OH! Band Lip Balm & Hand Lotion Set products with vinyl carry cases that defendants
19 design, manufacture, distribute, and/or offer for sale to consumers throughout the State of
20 California including, as example, but not limited to, Be All Smiles, Summer Blooms, Sunny Palms,
21 Lemon Tree, Moon Phase, Southwest Desert and Dotted Palms Lip Balm & Hand Lotion Sets. All
22 such Studio OH! branded Lip Balm & Hand Lotion Set products containing any LISTED
23 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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

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

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 ORANGE CIRCLE STUDIO CORPORATION, ORANGE
12 CIRCLE STUDIO, LLC and NORDSTROM, INC. 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 ORANGE CIRCLE STUDIO CORPORATION, ORANGE
16 CIRCLE STUDIO, LLC and NORDSTROM, INC. 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, markets and/or offers the PRODUCTS for sale or
19 use in the State of California.

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

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

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

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

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

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

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

19. ORANGE CIRCLE STUDIO CORPORATION, ORANGE CIRCLE STUDIO, LLC, NORDSTROM, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as “DEFENDANTS”.

VENUE AND JURISDICTION

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

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

22. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the

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 June 28, 2024, Davia served a valid and compliant Proposition 65 60-Day Notice of
17 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, on ORANGE
18 CIRCLE STUDIO CORPORATION, ORANGE CIRCLE STUDIO, LLC and NORDSTROM, INC. and
19 various public enforcement agencies stating that as a result of these DEFENDANTS' manufacture,
20 distribution and sales of the PRODUCTS, purchasers and users in the State of California are being
21 exposed to the Listed Chemical resulting from the reasonably foreseeable uses of PRODUCTS,
22 without the individual purchasers and users first having been provided with a "clear and reasonable
23 warning" regarding such toxic exposures.

24 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
25 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
26 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering of
27 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
28

1 continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
2 alleges and believes that such violations will continue to occur into the future.

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

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

8 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
9 LISTED CHEMICAL.

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

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

19 33. Each of the RETAIL DEFENDANTS, ORANGE CIRCLE STUDIO CORPORATION,
20 ORANGE CIRCLE STUDIO, LLC, NORDSTROM, INC. has actual knowledge of the potential
21 consumer product exposures to the LISTED CHEMICAL both pursuant to information obtained by
22 them from reliable sources in the course of doing business and pursuant to the 60-Day Notice.
23 Neither RETAIL DEFENDANTS nor NORDSTROM, INC. has designated an agent for service of
24 process in California or has a primary place of business in California.

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

27 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those
28 consumers and/or other individuals in the State of California who were or who could become

1 exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display and
2 organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

3 36. Contrary to the express policy and statutory prohibition of Proposition 65, employees
4 and individuals exposed to a LISTED CHEMICAL through dermal contact and/or ingestion and/or
5 inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
6 without a “clear and reasonable warning”, have suffered, and continue to suffer, irreparable harm,
7 for which harm they have no other plain, speedy or adequate remedy at law.

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

11 38. As a consequence of the above-described acts, California Health & Safety Code
12 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
13 DEFENDANTS.

14 39. In addition to the commission of all acts and actions identified hereinabove,
15 defendants ORANGE CIRCLE STUDIO CORPORATION, ORANGE CIRCLE STUDIO, LLC and
16 NORDSTROM, INC., further violated 27 C.C.R. 25600.2(g).

17 40. In pertinent part, 27 C.C.R. 25600.2(g) requires any retail seller of a product that may
18 cause a consumer product exposure to promptly provide the name and contact information for the
19 manufacturer, producer, packager, importer, supplier, and distributor of the product to any person
20 who has served notice under Health & Safety Code Section 25249.7(d)(1) alleging that the consumer
21 product causes an exposure that requires a warning.

22 41. Davia served such 60-Day Notice upon each ORANGE CIRCLE STUDIO
23 CORPORATION, ORANGE CIRCLE STUDIO, LLC and NORDSTROM, INC. and demanded they
24 provide the name and contact information for the manufacturer, producer, packager, importer,
25 supplier, and distributor of the PRODUCTS.

26 42. Thereafter, despite a reasonable time to respond, no defendant provided the name
27 and contact information for the manufacturer, producer, packager, importer, supplier, and
28 distributor of the PRODUCTS as demanded in her 60-Day Notice to them.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
3 follows:

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

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

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

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

14 Dated: November 12, 2024

SHEFFER LAW FIRM

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16 Gregory M. Sheffer
17 Attorneys for Plaintiff
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