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8 SUSAN DAVIA

**FILED**

FEB 09 2016

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF MARIN

11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 BPS DIRECT, LLC, BASS PRO SHOPS and  
16 DOES 1-150,

17 Defendants.

Case No. Civ 1600503

**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 Di(2-ethylhexyl)phthalate (“DEHP”) and Diisononyl phthalate  
5 (“DINP”), toxic chemicals found in certain PVC rain wear and decoy cord manufactured,  
6 distributed and/or 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  
13 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
14 requirement one year later and was therefore subject to the “clear and reasonable warning”  
15 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health*  
16 *& Safety Code § 25249.8.*) On December 20, 2013, the State listed Diisononyl phthalate as a  
17 chemical known to cause cancer. DINP became subject to the warning requirement one year  
18 later and was therefore subject to the “clear and reasonable warning” requirements of  
19 Proposition 65, beginning on December 20, 2014. (*27 CCR § 27001(b); Cal. Health & Safety Code*  
20 *§ 25249.8.*)

21 4. DEHP and DINP shall hereinafter be referred to, collectively, as the “LISTED  
22 CHEMICAL.”

23 5. Significant levels of DEHP have been discovered in or on vinyl/PVC components  
24 of rain wear that defendants manufacture, distribute, and/or offer for sale to consumers  
25 throughout the State of California including, but not limited to, Bass Pro Shops Adult PVC  
26 Rainsuit (#1789870). All such rain wear comprised of vinyl/PVC materials containing DEHP  
27 shall hereinafter be referred to as “PRODUCT 1.” Significant levels of DINP have been  
28 discovered in or on PVC decoy cord that defendants manufacture, distribute, and/or offer for

1 sale to consumers throughout the State of California including, but not limited to, Red Head  
2 PVC Decoy Cord. All such PVC decoy cord containing DINP shall hereinafter be referred to as  
3 "PRODUCT 2." PRODUCT 1 and PRODUCT 2 shall collectively be referred to hereafter as  
4 "PRODUCTS".

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

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

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

14 **PARTIES**

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

19 10. Based upon publicly available information, plaintiff is informed and believes, and  
20 thereupon alleges, that each defendant BPS DIRECT, LLC and BASS PRO SHOPS is a person  
21 doing business within the meaning of California Health & Safety Code Section 25249.11.

22 11. Based upon publicly available information, plaintiff is informed and believes, and  
23 thereupon alleges, that each defendant BPS DIRECT, LLC and BASS PRO SHOPS is legally  
24 responsible for the manufacture, distribution, and/or offer of the PRODUCTS for sale or use in  
25 the State of California or implies by its conduct that it manufactures, distributes, and/or offers  
26 the PRODUCTS for sale or use in the State of California.

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





1 individual workers, purchasers and users first having been provided with a “clear and  
2 reasonable warning” regarding such toxic exposures.

3 27. On October 20, 2015, a valid and compliant Proposition 65 sixty-day notice of  
4 violation (“Notice 2”), together with a valid, requisite Certificate of Merit, was provided to BPS  
5 DIRECT, LLC, BASS PRO SHOPS and various public enforcement agencies stating that as a  
6 result of the DEFENDANTS’ manufacture, distribution and sales of PRODUCT 2, workers,  
7 purchasers and users in the State of California are being exposed to DINP resulting from the  
8 reasonably foreseeable uses of PRODUCT 2, without the individual workers, purchasers and  
9 users first having been provided with a “clear and reasonable warning” regarding such toxic  
10 exposures.

11 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
12 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
13 and plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or  
14 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code  
15 Section 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s Notice 1  
16 and Notice 2. Plaintiff further alleges and believes that such violations will continue to occur  
17 into the future.

18 29. After receipt of the claims asserted in the Notice 1 and Notice 2, the appropriate  
19 public enforcement agencies have failed to commence and diligently prosecute a cause of action  
20 against DEFENDANTS under Proposition 65.

21 30. The PRODUCT 1 manufactured, distributed, and/or offered for sale or use in  
22 California by DEFENDANTS, contains DEHP. The PRODUCT 2 manufactured, distributed,  
23 and/or offered for sale or use in California by DEFENDANTS, contains DINP.

24 31. DEFENDANTS knew or should have known that the PRODUCT 1 contained  
25 DEHP and PRODUCT 2 contained DINP.

26 32. The LISTED CHEMICAL is present in or on the relevant PRODUCTS in such a  
27 way as to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27  
28 CCR Section 25602(b), through dermal contact and/or ingestion and/or inhalation during or as

1 a consequence of the packing, shipping, unpacking, display and daily organization and  
2 movement of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

3 33. DEFENDANTS knew or should have known that the packing, shipping,  
4 unpacking, display and daily organization and movement of PRODUCTS as well as the  
5 reasonably foreseeable use of the PRODUCTS exposes individuals to the relevant LISTED  
6 CHEMICAL through dermal contact and/or ingestion and/or inhalation.

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

10 35. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
11 employees, consumers and/or other individuals in the State of California who were or who  
12 could become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail  
13 receipt, display and organization of PRODUCTS as well as the reasonably foreseeable use of the  
14 PRODUCTS.

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

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

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

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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),  
5 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation  
6 alleged 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  
9 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable  
10 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to the  
11 LISTED CHEMICAL;

12 3. That the Court grant plaintiff his 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: February 9, 2016

Respectfully submitted,

15 SHEFFER LAW FIRM

16  
17 By:   
18 Gregory M. Sheffer  
19 Attorneys for Plaintiff  
20 SUSAN DAVIA  
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