

**FILED**

MAY 15 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: C. Lucchesi, Deputy

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6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION

10  
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 FRANKTEX, INC. and DOES 1-150,

15 Defendants.

Case No. CIV

**1901898**

**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  
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in certain vinyl/PVC  
5 packaging and storage cases for textile bedding products manufactured, distributed and/or  
6 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 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 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.*)

17 4. DEHP shall hereinafter be referred to as “LISTED CHEMICAL.”

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on  
19 vinyl/PVC components of packaging and storage cases for Franktex, Inc. textile bedding products  
20 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
21 California including, as example, but not limited to, cases for SOHO Down Alternative Comforter  
22 (all sizes), Casual Comfort bedspread/shams (all sizes). All such packaging and storage cases  
23 comprised of vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be  
24 referred to as the “PRODUCTS.”

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

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

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

7 **PARTIES**

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

12 10. Based upon publicly available information, plaintiff is informed and believes, and  
13 thereupon alleges, that defendant FRANKTEX, INC. is a person doing business within the meaning  
14 of California Health & Safety Code Section 25249.11.

15 11. Based upon publicly available information, plaintiff is informed and believes, and  
16 thereupon alleges, that defendant FRANKTEX, INC. is legally responsible for the manufacture,  
17 distribution, and/or offer of the PRODUCTS for sale or use in the State of California or implies by  
18 its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the  
19 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 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  
25 manufacturing, 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.

28

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

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

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

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

13 19. FRANKTEX, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR  
14 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
15 hereinafter as "DEFENDANTS".

### 16 VENUE AND JURISDICTION

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

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

26 22. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
28 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 December 6, 2018, a valid and compliant Proposition 65 60-Day Notice of  
17 Violation ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to  
18 FRANKTEX, INC. and various public enforcement agencies stating that as a result of the  
19 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, workers, purchasers and  
20 users in the State of California are being exposed to the Listed Chemical resulting from the  
21 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
22 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

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

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

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

6           30.     DEFENDANTS knew or should have known that the PRODUCTS contained such  
7 LISTED CHEMICAL.

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

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

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

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

23           35.     Contrary to the express policy and statutory prohibition of Proposition 65,  
24 employees and individuals exposed to a LISTED CHEMICAL through dermal contact and/or  
25 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold  
26 by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,  
27 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.  
28

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

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

7 PRAYER FOR RELIEF

8 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
9 follows:

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

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

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

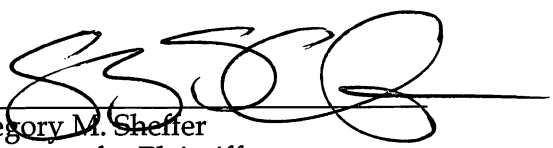
19 4. That the Court grant such other and further relief as may be just and proper.

20 Dated: May 14, 2019

Respectfully submitted,

21 SHEFFER LAW FIRM

22  
23 By:



Gregory M. Sheffer  
Attorneys for Plaintiff  
SUSAN DAVIA