

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  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941  
Telephone: 415.388.0911  
Facsimile: 415.388.9911

Attorneys for Plaintiff  
SUSAN DAVIA

**FILED**

JAN 17 2020

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Thomason, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,  
Plaintiff,

v.

MIDWEST TRADING GROUP, INC. and  
DOES 1-150,  
Defendants.

Case No. CIV **2000230**  
**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”) and di(isononyl)phthalate (DINP), toxic  
5 chemicals found in certain vinyl/PVC travel accessories 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.*) On December 20, 2013, the State listed DINP as a chemical known to cause  
17 cancer. DINP became subject to the warning requirement on December 20, 2014.

18 4. DEHP and DINP shall hereinafter be referred to as “LISTED CHEMICAL.”

19 5. Significant levels of the LISTED CHEMICAL have been discovered in or on  
20 vinyl/PVC components of PowerXcel brand electronic sync and charge cables, including, but not  
21 limited to, PowerXcel 30 Pin to USB, 3 Ft. Flat Cable, 30UC3-24/1805, all colors and sizes. All such  
22 Mytagalongs travel accessories comprised of vinyl/PVC materials 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 defendant MIDWEST TRADING GROUP, INC. is a person doing business  
12 within the meaning of California Health & Safety Code Section 25249.11.

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

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

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

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

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



**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 March 27, 2019, a valid and compliant Proposition 65 60-Day Notice of Violation  
14 ("60-Day Notice"), together with a valid, requisite Certificate of Merit, were provided to MIDWEST  
15 TRADING GROUP, INC. and various public enforcement agencies stating that as a result of the  
16 DEFENDANTS' manufacture, distribution and sales of the PRODUCTS, workers, 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 of the PRODUCTS, without the individual purchasers and  
19 users first having been provided with a "clear and reasonable warning" regarding such toxic  
20 exposures.

21 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
22 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
23 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering  
24 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
25 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further  
26 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 and Supplemental 60-Day  
2 Notice, the appropriate public enforcement agencies have failed to commence and diligently  
3 prosecute a cause of action against 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

