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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 MIDWEST TRADING GROUP, INC., CVS  
HEALTH CORP., CVS PHARMACY, INC.  
15 and DOES 1-150,

16 Defendants.

Case No. CIV2000230

**FIRST AMENDED 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-coated electronic sync and charge cable products  
6 manufactured, 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 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 PowerXcel cables comprised of vinyl/PVC materials containing any LISTED CHEMICAL shall  
23 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. Based upon publicly available information, plaintiff is informed and believes, and  
19 thereupon alleges, that each defendant CVS HEALTH CORP. and CVS PHARMACY, INC. is a  
20 person doing business within the meaning of California Health & Safety Code Section 25249.11.

21 13. Based upon publicly available information, plaintiff is informed and believes, and  
22 thereupon alleges, that each defendant CVS HEALTH CORP. and CVS PHARMACY, INC. is  
23 legally responsible for the distribution, and/or offer of the PRODUCTS for sale or use in the State  
24 of California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or  
25 use in the State of California.

26 14. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons  
27 doing business within the meaning of California Health & Safety Code Section 25249.11.

28

1 15. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
2 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
3 engage in the process of research, testing, designing, assembling, fabricating, and/or  
4 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

7 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
8 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the  
9 State of California.

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

12 19. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State  
13 of California.

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

19 21. MIDWEST TRADING GROUP, INC., CVS HEALTH CORP., CVS PHARMACY,  
20 INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL  
21 DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as  
22 "DEFENDANTS".

23 **VENUE AND JURISDICTION**

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



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

3 29. On February 6, 2020, a valid and compliant Proposition 65 Supplemental 60-Day  
4 Notice of Violation (“Supplemental 60-Day Notice”), together with a valid, requisite Certificate of  
5 Merit, were provided to MIDWEST TRADING GROUP, INC., CVS HEALTH CORP., CVS  
6 PHARMACY, INC. and various public enforcement agencies stating that as a result of the  
7 DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, workers, purchasers and  
8 users in the State of California are being exposed to the Listed Chemical resulting from the  
9 reasonably foreseeable uses of certain of the PRODUCTS, without the individual purchasers and  
10 users first having been provided with a “clear and reasonable warning” regarding such toxic  
11 exposures.

12 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
13 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and  
14 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering  
15 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6  
16 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further  
17 alleges and believes that such violations will continue to occur into the future.

18 31. After receipt of the claims asserted in the 60-Day Notice and Supplemental 60-Day  
19 Notice, the appropriate public enforcement agencies have failed to commence and diligently  
20 prosecute a cause of action against DEFENDANTS under Proposition 65.

21 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
22 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

23 33. DEFENDANTS knew or should have known that the PRODUCTS contained such  
24 LISTED CHEMICAL.

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

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

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

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

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

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

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

21 40. As a consequence of the above-described acts, California Health & Safety Code  
22 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
23 DEFENDANTS.

24 **PRAYER FOR RELIEF**

25 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as  
26 follows:

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

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

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

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

11 Dated: April 15, 2020

Respectfully submitted,

SHEFFER LAW FIRM

14 By: \_\_\_\_\_  
15 Gregory M. Sheffer  
16 Attorneys for Plaintiff  
17 SUSAN DAVIA  
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