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County of Alameda
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T. Pierce

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 CVS PHARMACY, INC., et al.,

15 Defendants.

Case No.: RG20068754

**SECOND AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELEIF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

16 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
22 "[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

25 2. This Second Amended Complaint ("SAC") is a representative action brought by
26 Plaintiff in the public interest of the citizens of the State of California to enforce the People's right
27 to be informed of the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a
28 toxic chemical found in blood pressure monitors sold by defendant CVS Pharmacy, Inc. ("CVS")

1 and manufactured and/or distributed by Microlife USA, Inc. (“Microlife”) (collectively, the
2 “Defendants”) in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known
5 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
6 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
7 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
8 reproductive toxicity.

9 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
10 within California or sell products therein to comply with Proposition 65 regulations. Included in
11 such regulations is the requirement that businesses must label any product containing a Proposition
12 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
13 exposing any person to any such listed chemical.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
21 without a requisite exposure warning, blood pressure monitors manufactured or distributed by
22 Microlife (the “Products”) that expose persons to DEHP.

23 7. Defendants’ failure to warn consumers and other individuals in California of the
24 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
25 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
26 penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

3 16. This Court has jurisdiction over Defendants because each defendant is either a
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is
5 registered with the California Secretary of State as foreign corporations authorized to do business
6 in the State of California, and/or has otherwise purposefully availed itself of the California market.
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
8 and permissible with traditional notions of fair play and substantial justice.

9 **STATUTORY BACKGROUND**

10 17. The people of the State of California declared in Proposition 65 their right “[t]o be
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
12 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a
14 “clear and reasonable warning” before being exposed to substances listed by the State of California
15 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

16 No person in the course of doing business shall knowingly and intentionally expose any
17 individual to a chemical known to the state to cause cancer or reproductive toxicity without
18 first giving clear and reasonable warning to such individual...

19 19. An exposure to a chemical in a consumer product is one “which results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
23 shall provide a warning to any person to whom the product is sold or transferred unless the product
24 is packaged or labeled with a clear and reasonable warning.”

1 reproductive toxicity. In summary, DEHP was listed under Proposition 65 as a chemical known to
2 the State to cause cancer and reproductive toxicity.

3 23. The exposures that are the subject of the Notices result from the purchase,
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of
5 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur
6 through direct skin contact when the Products are contacted with bare hands or if the Products are
7 held directly against bare skin. If the Products are stored in a carrying case, articles placed in the
8 case can absorb DEHP that can subsequently be handled, mouthed, or ingested by the user resulting
9 in exposure to DEHP. Finally, while mouthing of the Products does not seem likely, some amount
10 of exposure through ingestion can occur by touching the Products with subsequent touching of the
11 user's hand to mouth.

12 24. Defendants have supplied, processed, marketed, distributed, offered to sell and/or
13 sold the Products in California since at least March 5, 2020. The Products continue to be distributed
14 and sold in California without the requisite warning information.

15 25. At all times relevant to this action, Defendants have knowingly and intentionally
16 exposed users, consumers and/or patients to the Products and DEHP without first giving a clear
17 and reasonable exposure warning to such individuals.

18 26. As a proximate result of acts by Defendants, each as a person in the course of doing
19 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
20 California, including in Alameda County, have been exposed to the Listed Chemical without a
21 clear and reasonable warning on the Products. The individuals subject to the violative exposures
22 include normal and foreseeable users, consumers and patients that use the Products, as well as all
23 others exposed to the Products.

1 **SATISFACTION OF NOTICE REQUIREMENTS**

2 27. On March 5, 2020²³⁴ Plaintiff gave notice of alleged violation of Health and Safety
3 Code § 25249.6 (the “Notices”) to Defendants concerning the exposure of California citizens to
4 DEHP contained in the Products without proper warning, subject to a private action to Defendants
5 and to the California Attorney General’s office and the offices of the County District attorneys and
6 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
7 violations allegedly occurred.

8 28. The Notices complied with all procedural requirements of Proposition 65 including
9 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
10 least one person with relevant and appropriate expertise who reviewed relevant data regarding
11 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
12 action.

13 29. After receiving the Notices, and to Plaintiff’s best information and belief, none of
14 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
15 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
16 are the subject of the Notices.

17 30. Plaintiff is commencing this action more than sixty (60) days from the date of the
18 Notices to Defendants, as required by law.

19 **FIRST CAUSE OF ACTION**

20 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

21
22
23 ² The March 5, 2020 Notice was assigned AG #2020-00562.

24 ³ On February 2, 2021, Plaintiff filed and served a revised Notice. The purpose of the revised
25 Notice was to provide notice to Microlife of the same Proposition 65 violations alleged in the
26 March 5, 2020 Notice for CVS Health Blood Pressure Monitors. The February 2, 2021 Notice was
27 assigned AG #2021-00420.

28 ⁴ On December 3, 2021, Plaintiff filed and served a second revised Notice. The purpose of the
second revised Notice was to provide notice to Defendants of Proposition 65 violations alleged in
all blood pressure monitors manufactured or distributed by Microlife. The December 3, 2021
Notice was assigned AG #2021-02965

1 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of
2 this SAC as though fully set forth herein.

3 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
4 of the Product.

5 33. Use of the Products expose users to DEHP, a hazardous chemical found on the
6 Proposition 65 list of chemicals known to be hazardous to human health.

7 34. The Products do not comply with the Proposition 65 warning requirements.

8 35. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since March 5, 2020, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product to
11 DEHP without providing required warnings under Proposition 65.

12 36. The exposures that are the subject of the Notices result from the purchase,
13 acquisition, handling and recommended use of the Products. Consequently, the primary route of
14 exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur
15 through direct skin contact when the Products are contacted with bare hands or if the Products are
16 held directly against bare skin. If the Products are stored in the carrying case, articles placed in the
17 case can absorb DEHP that can subsequently be handled, mouthed, or ingested by the user resulting
18 in exposure to DEHP. Finally, while mouthing of the Products does not seem likely, some amount
19 of exposure through ingestion can occur by touching the Products with subsequent touching of the
20 user's hand to mouth.

21 37. Plaintiff, based on his best information and belief, avers that such exposures will
22 continue every day until clear and reasonable warnings are provided to Product purchasers and
23 users or until this known toxic chemical is removed from the Products.

24 38. Defendants have knowledge that the normal and reasonably foreseeable use of the
25 Product exposes individuals to DEHP, and Defendants intend that exposures to DEHP will occur
26 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
27 the Products to consumers in California

1 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 SAC.

3 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
4 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

5 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
6 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
9 relief:

10 A. That the court assess civil penalties against each of the Defendants in the amount
11 of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty
12 amount per violation of \$912,000.00) in accordance with Health and Safety Code §
13 25249.7(b);

14 B. That the court preliminarily and permanently enjoin Defendants mandating
15 Proposition 65 compliant warnings on the Products;

16 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
17 amount of \$50,000.00.

18 D. That the court grant any further relief as may be just and proper.

19 Dated: February 8, 2022

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